(5)

No. 90-1577-CFY
Status: GRANTED

Title: United States, Petitioner
v.
R. L. C.

Docketed:
April 11, 1991

Court: United States Court of Appeals
for the Eighth Circuit

Counsel for petitioner: Solicitor General

Counsel for respondent: Roe,Katherian D.

031291 ext until 041791 by Blackmun, J.-CITED
041591 respond corr as above per counsel

Entry	Date	Note	Proceedings and Orders
1	Mar 8 1991	G	Application (A90-683) to extend the time to file a petition for a writ of certiorari from March 18, 1991 to April 17, 1991, submitted to Justice Blackmun.
2	Mar 12 1991		Application (A90-683) granted by Justice Blackmun extending the time to file until April 17, 1991.
3	Apr 11 1991	G	Petition for writ of certiorari filed.
5	Apr 19 1991		Order extending time to file response to petition until May 31, 1991.
6	May 30 1991		Brief of respondent R.L.C. in opposition filed.
7	May 30 1991	G	Motion of respondent for leave to proceed in forma pauperis filed.
8	Jun 4 1991		DISTRIBUTED. June 20, 1991
9	Jun 5 1991		Reply brief of petitioner R.L.C., a Juvenile Male filed.
10	Jun 24 1991		Motion of respondent for leave to proceed in forma pauperis GRANTED.
11	Jun 24 1991		Petition GRANTED.
			**********
13	Jul 10 1991	G	Motion of the Solicitor General to dispense with printing the joint appendix filed.
12	Jul 22 1991		Brief of petitioner United States filed.
14	Aug 22 1991		Brief of respondent R.L.C. filed.
15	Sep 9 1991		Record filed.
		*	Certified record - U. S. Court of Appeals, Eighth Circuit.
17	Sep 13 1991		Motion of the Solicitor General to dispense with printing the joint appendix GRANTED.
18	Sep 13 1991		Reply brief of petitioner United States filed.
19	Oct 3 1991		Record filed.
		*	Confidential record and proceedings, United States District Court, District of Minnesota.
20	Oct 15 1991		SET FOR ARGUMENT TUESDAY, DECEMBER 10, 1991. (3RD CASE)
21	Oct 24 1991		CIRCULATED.
22	Dec 10 1991		ARGUED.

No. 90-1577

Supreme Court, U.S.
FILED
APR 11 1991
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED

Whether, in sentencing respondent as a juvenile delinquent pursuant to 18 U.S.C. 5037(c)(1), which provides that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," the district court was required to apply the Sentencing Guidelines to determine "the maximum term of imprisonment."

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In the Supreme Court of the United States

OCTOBER TERM, 1990

No.

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-14a) is reported at 915 F.2d 320. The opinion of the district court (App., *infra*, 15a-16a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 1990. A petition for rehearing was denied on December 18, 1990. App., *infra*, 15a. On March 12. 1991, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including April 17, 1991. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 5037 provides, in part, as follows:

> (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. * * *
>
> * * * * *
>
> (c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—
>
> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of
>
> (A) the date when the juvenile becomes twenty-one years old; or
>
> (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or
>
> (2) in the case of a juvenile who is between eighteen and twenty-one years old—
>
> (A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or
>
> (B) in any other case beyond the lesser of—

> (i) three years; or
>
> (ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.
>
> Section 3624 is applicable to an order placing a juvenile under detention.

STATEMENT

1. On November 5, 1989, La Tesha Mountain died on the Red Lake Indian Reservation as the result of head and neck injuries suffered when she was propelled from the back seat to the front of a car that her mother, Deborah Garrigan, was driving. Tr. 6, 44-45, 49, 217. The car was demolished when it was hit from the rear by a stolen Chevrolet Camaro driven by respondent. Tr. 44, 56, 68-69, 151-153, 166-168. Respondent and James White, Jr., another juvenile who was a passenger in the car when it was stolen and when the accident occurred, were drunk. They had been drinking at an adult party on the reservation and thereafter stole the car that was involved in the accident. Tr. 119, 163-169, 197-198, 217, 240-241, 249, 279-280; App., *infra*, 2a, 15a-16a.

2. Following a bench trial, the district court found that respondent stole the car, that he drove the car recklessly while he was intoxicated, that he caused La Tesha's death, and that his conduct constituted involuntary manslaughter, in violation of 18 U.S.C. 1112(a). The court found respondent to be a juvenile delinquent under 18 U.S.C. 5031. Tr. 318-319; App., *infra*, 15a-16a.

At sentencing, respondent sought leniency but did not ask the court to apply the Sentencing Guidelines to determine his sentence. Nor did he urge the court

to limit his term of commitment to the base offense level defined by the Sentencing Guidelines. 1/24/90 Tr. 5-7. The government urged the court to impose the maximum statutory penalty of three years' confinement. *Id* at 7-8. See 18 U.S.C. 1112(b). The court carefully weighed the sentencing options and the circumstances of the crime, as well as the juvenile facilities available for detention. 1/24/90 Tr. 9-10. After doing so, the court committed respondent for a term of three years and recommended that he be sent to the Missouri River Adolescent Center in Chamberlain, South Dakota. *Id.* at 8-11.

3. Respondent appealed. The court of appeals upheld the finding of delinquency, but vacated the sentence and remanded the case for resentencing. App., *infra*, 1a-14a. The court concluded that the 36-month sentence that respondent received exceeded the maximum period of confinement that can be imposed on a juvenile delinquent under 18 U.S.C. 5037(c)(1), which provides in part that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." App., *infra*, 3a-14a.

The court acknowledged that the Sentencing Guidelines do not apply to individuals sentenced as juvenile delinquents under 18 U.S.C. 5037, App., *infra*, 6a, but nevertheless concluded that "[u]sing the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences." *Ibid.* The court also determined that the legislative history of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, 98 Stat. 1987 (codified at 18 U.S.C. 3551-3742 and 28 U.S.C. 991-998), supported that conclusion because it showed that "Congress did not intend the real time served by juvenile offenders to exceed the real time that would be served by adults convicted of similar crimes." App., *infra*, 7a-8a. Finally, the court invoked the rule of lenity, stating that the rule "favors the statutory construction that yields the shorter sentence." *Id.* at 12a. As the court summarized: "We hold that the phrase 'maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult' prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines." *Id.* at 12a-13a.

4. The government filed a petition for rehearing and suggestion for rehearing en banc. The panel denied the rehearing petition, and the full court declined the suggestion for en banc rehearing over the dissent of four judges. App., *infra*, 17a.[1]

REASONS FOR GRANTING THE PETITION

The court of appeals has erroneously decided an important question of law in a manner that conflicts with a decision of another federal court of appeals. By limiting the "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" under 18 U.S.C. 5037(c)(1)(B) to the presumptive term of imprisonment that a similarly situated adult would face under the Sentencing Guidelines, the court of appeals has seriously misread the commitment provisions for juvenile delinquents. In effect, the Eighth

[1] Pursuant to the court of appeals' mandate, respondent was resentenced on January 25, 1991, to a period of 18 months' confinement.

Circuit has ruled that the Sentencing Guidelines must be applied by the district courts in making commitment decisions in juvenile delinquency proceedings even though neither Congress nor the Sentencing Commission has imposed any such requirement.

1. The Eighth Circuit's decision in this case directly conflicts with the Ninth Circuit's decision in *United States* v. *Marco L.*, 868 F.2d 1121, cert. denied, 493 U.S. 956 (1989). In *Marco L.*, the Ninth Circuit held that the "maximum term of imprisonment" authorized by 18 U.S.C. 5037(c)(1) is the maximum term of imprisonment authorized by the statute describing the offense, not the top of the presumptive sentencing range defined by the Sentencing Guidelines. 868 F.2d at 1122-1124. The court below expressly acknowledged that its holding conflicts with the Ninth Circuit's decision in *Marco L.* App., *infra*, 13a n.3.

2. The question presented will recur with sufficient regularity that it is important for this Court to resolve the conflict. In Fiscal Year 1990, the federal government brought juvenile delinquency proceedings against 168 defendants, and the figures for Fiscal Years 1986-1989 are similar.[2] Moreover, many such cases (like this one) can be prosecuted only in federal courts, because the crime occurs in an area of exclusive federal jurisdiction, such as an Indian reservation.

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[2] In 1986, the federal government brought juvenile delinquency proceedings against 129 defendants. In 1987, there were 81 juvenile delinquency defendants; in 1988, there were 132, and in 1989, there were 172. Administrative Office of the U.S. Courts, *Federal Judicial Workload Statistics* Table D-2 (Sept. 30, 1990).

3. The decision below is plainly incorrect. Analysis of 18 U.S.C. 5037 and the Sentencing Reform Act of 1984 shows that the "maximum term of imprisonment" authorized by Section 5037(c)(1) is the maximum term of imprisonment authorized by the law describing the offense of conviction, not the top of the presumptive sentencing range defined by the Sentencing Guidelines.

a. The Sentencing Guidelines do not "authorize" any punishment to be imposed for an offense. Congress directed the Sentencing Commission to adopt a comprehensive system of guidelines to channel the district courts' sentencing discretion, but did not give the Sentencing Commission "authority" to establish punishments or to modify an offender's "maximum term of imprisonment" in any way; Congress reserved that authority for itself. The Sentencing Guidelines define ranges of presumptive sentences for categories of offenses and offenders; those ranges are within the limits provided by the existing laws defining the punishment for particular offenses. 28 U.S.C. 991, 994(a) and (b); *Mistretta* v. *United States*, 488 U.S. 361, 367-369, 374-375 (1989) ("Congress instructed the Commission that these sentencing ranges must be consistent with pertinent provisions of Title 18 of the United States Code and could not include sentences in excess of the statutory maxima."). Congress also left in the district courts' hands the discretion to depart upward from the Guidelines range if there is an aggravating factor of a kind or to a degree that was not adequately considered by the Sentencing Commission and that warrants a more severe sentence than can be found within the presumptive sentencing range. 18 U.S.C. 3553(b). See also United States Sentencing Comm'n, *Guide-*

lines Manual § 5K2.0 (1990). The Sentencing Guidelines therefore do not "authorize" a "maximum term of imprisonment," but simply channel the courts' discretion to impose a particular term of imprisonment within the range that Congress has authorized.

That conclusion is fully consistent with general principles of federal criminal law. This Court's decisions make clear that only Congress has power to "authorize" a term of imprisonment as the punishment for a crime. As this Court stated in *Ex parte United States*, 242 U.S. 27, 42 (1916), "the authority to define and fix the punishment for crime is legislative." See *United States* v. *Evans*, 333 U.S. 484, 486 (1948); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812). Because the "authority" to imprison an offender stems from the law defining the offense and authorizing a term of imprisonment, the most natural reading of the "maximum punishment" clause in 18 U.S.C. 5037(c)(1) refers to the maximum term of imprisonment authorized in the law defining the offense.[3]

Another provision of the Sentencing Reform Act of 1984 makes the same point. One new feature adopted by the Act was a classification system that would be used in future legislation to rank federal offenses according to their relative seriousness. Felonies would be categorized from Class A to E, misdemeanors from Class A to C, with remaining crimes listed as infractions. 18 U.S.C. 3559(a)(1)-(9). Congress believed

[3] Examination of other portions of Title 18 demonstrates that the phrase "maximum term of imprisonment" is used as a term of art. Congress has invariably used that phrase to mean the maximum penalty authorized by statute. See, *e.g.*, 18 U.S.C. 3, 373, 3142(e), 3156(a)(3).

that this grading system would enable it to define the maximum term of imprisonment, the maximum fine, the availability and maximum term of probation, and the maximum term of supervised release simply by specifying the grade of a particular offense. S. Rep. No. 225, 98th Cong., 1st Sess. 51, 86-88 (1983).[4] To avoid any misunderstanding about the effect of this classification system, particularly for existing laws, Congress made clear that "the maximum term of imprisonment is the term authorized by the law describing the offense," not by the new grading scheme. 18 U.S.C. 3559(b). Congress therefore was quite explicit in providing that the maximum term of imprisonment authorized for an adult offender is the maximum sentence set by the statutory penalty provision.

The definition given to the phrase "maximum term of imprisonment" in Section 3559(b) is significant because Section 3559(b) was enacted and 18 U.S.C. 5037(c)(1) was amended in the Sentencing Reform Act of 1984. See 18 U.S.C. 3559 and 5037 (Supp. II 1984). Since Congress is presumed to give terms the same meaning throughout a statute, see, *e.g.*, *Sullivan* v. *Stroop*, 110 S. Ct. 2499, 2504 (1990), the phrase "maximum term of imprisonment" should have the same meaning in Section 5037(c)(1) that it has in Section 3559(b).[5] Thus, as the Ninth Circuit

[4] See 18 U.S.C. 3561(a) (probation), 3571(b) (fines), 3581(b) (imprisonment), 3583(b) (supervised release).

[5] The 1984 amendments also did not adopt a novel rule of law. The version of Section 5037 that was in effect prior to the 1984 amendment made clear that a juvenile offender could be sentenced to the same period of custody as an adult convicted of the same crime. See 18 U.S.C. 5037(b) (1982) (authorizing a district court to commit a juvenile

concluded in *Marco L.*, 868 F.2d at 1124, Section 3559 (b) shows that the "maximum term of imprisonment" that can be imposed under Section 5037 on a juvenile delinquent refers to the maximum period of confinement set forth in the statute describing the offense. See also S. Rep. No. 225, *supra*, at 51, 114.[6]

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for a period "not [to] extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner"); S. Rep. No. 1011, 93d Cong., 2d Sess. 57 (1974) (at a juvenile disposition hearing, the court may "commit the juvenile to the custody of the Attorney General for a period not to extend beyond the juvenile's twenty-first birthday, or the maximum term for which a sentence could have been imposed on an adult convicted of the same offense, whichever comes first").

[6] In 1986, Congress amended Section 5037 by deleting the phrase "by section 3581(b)" immediately following the phrase "maximum term of imprisonment that would be authorized." Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 21(a)(2), 100 Stat. 3596. Referring to the 1986 Amendment, the Eighth Circuit noted "that Congress reconsidered and rejected establishing * * * statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive." App., *infra*, 7a n.1. The court of appeals relied on that amendment to bolster its conclusion that juveniles may not be given longer criminal sentences than adults. In doing so, the court misread the 1986 amendment.

The purpose of the 1986 amendment to 18 U.S.C. 5037 was to ensure that juveniles would not receive a more severe punishment than adults, not to provide a lower ceiling for juvenile offenders. See S. Rep. No. 278, 99th Cong., 2d Sess. 3 (1986) ("Section 17 [of the bill that became the 1986 Act] makes clear that juvenile sentences are to be of equal length as those for adult offenders committing the same crime, * * *."); 131 Cong. Rec. 14,177 (1985) (section-by-section analysis of S. 1236) ("Because of the effect of 18 U.S.C. § 3559(b)(2) [Supp. II 1984], deleting the reference to section 3581(b) will tie the maximum sentence for juveniles to the maximum sentence for adults, rather than making juvenile sentences more severe than adult sentences."). A footnote in the House Committee Report says that this amendment in the 1986 Act "delete[s] references to 18 U.S.C. 3581(b) so that juvenile offenders will not be subjected to the same maximum penalties assessed for adult offenders. A parallel amendment is made by section 3(b) of the bill. *See* discussion at 3, *supra*." H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 n.3 (1986). Although that footnote is inartfully phrased, when read in context it indicates that the purpose of the amendment was to ensure that juvenile offenders would have their maximum terms of confinement set by Sections 5037 and 3559(b), instead of 3581(b), which relates only to adult offenders.

b. The Eighth Circuit stated that the Sentencing Guidelines do not apply to juvenile commitment hearings under 18 U.S.C. 5037, App., *infra*, 6a, but its decision effectively requires district courts to apply the Guidelines to commitment decisions at juvenile hearings. That requirement is unjustified because Congress did not incorporate the Sentencing Guidelines into 18 U.S.C. 5037.

Section 5037(a) requires the court, at a juvenile disposition hearing, to "*consider*[] any pertinent *policy statements* promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994" (emphasis added). The necessary implication of that provision is that courts should consider the Commision's policy statements in selecting juvenile dispositions, but they need not apply the Guidelines themselves.[7]

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[7] The Sentencing Reform Act of 1984 clearly distinguishes between the Sentencing Commission's policy statements and its guidelines. See 28 U.S.C. 994-995. See also S. Rep. No. 225, *supra*, at 167 ("It should be noted that a sentence

Moreover, 28 U.S.C. 995(a)(19) directs the Sentencing Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents." That provision would be meaningless if the courts already had to apply the Guidelines in juvenile commitment proceedings. The legislative history of the Sentencing Reform Act of 1984 makes the same point, stating that "[t]he Parole Commission now uses its Youth Corrections Act guidelines for juveniles; it is expected that the Sentencing Commission will make a similar recommendation for Federal judges." S. Rep. No. 225, *supra*, at 183. To date, the Sentencing Commission has not adopted any policy statements for juvenile commitment determinations, and it has only recently begun to consider whether Sentencing Guidelines for juveniles are feasible.

In sum, these provisions show that the Sentencing Guidelines do not apply to juvenile commitment hearings, as the Ninth Circuit noted in *Marco L.*, 868 F.2d at 1124. Unless and until the Sentencing Commission adopts policy statements restricting the district courts' sentencing discretion at such hearings, the district courts can still exercise the same sentencing discretion that they enjoyed at juvenile and adult sentencing proceedings before the Sentencing Guidelines went into effect. In the exercise of that discretion, the district courts can sentence juvenile delinquents to terms of detention equal to the statutory maximum terms for the applicable penal provisions. The district court therefore did not violate 18 U.S.C.

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that is inconsistent with the sentencing guidelines is subject to appellate review [see 18 U.S.C. 3742], while one that is consistent with [the] guidelines but inconsistent with the policy statements is not.").

5037(c)(1) in committing respondent to three years' custody for involuntary manslaughter.

c. The Eighth Circuit correctly noted that 18 U.S.C. 5037(c) was amended as part of the Comprehensive Crime Control Act of 1984. The court then reasoned that, because a principal purpose of the Act was to eliminate unwarranted sentencing disparities in federal cases, the "maximum punishment" clause should be read to limit the maximum sentence that can be imposed on a juvenile to the maximum term of confinement in the Sentencing Guidelines. Otherwise, the court of appeals reasoned, juveniles would be subject to more severe punishments than adult offenders, which would undercut the goals of the Act. App., *infra*, 7a-11a.[8]

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[8] The Eighth Circuit invoked the rule of lenity in support of its interpretation of 18 U.S.C. 5037(c)(1), App., *infra*, 11a-12a, but that canon of construction has no application to this case. The rule of lenity is not applicable unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston* v. *United States*, 415 U.S. 814, 831 (1974), such that even "[a]fter [a court has] 'seize[d] every thing from which aid can be derived * * *' [it is still] left with an ambiguous statute." *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805)). This Court has "always reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to" the standard tools of statutory interpretation. *Moskal* v. *United States*, 111 S. Ct. 461, 465 (1990). The text of Section 5037 makes clear that the maximum punishment" clause refers to the statutory maximum punishment, and a straightforward reading of Section 5037 does not produce a result "so 'absurd or glaringly unjust,'" *United States* v. *Rodgers*, 466 U.S. 475, 484 (1984) (quoting *Sorrells* v. *United States*, 287 U.S. 435, 450 (1932)), as to raise a "reasonable doubt," *Moskal* v. *United States*, 111 S. Ct. at 465, about Congress's intent. There is therefore no occasion to resort to the rule of lenity.

The premise of the court of appeals' analysis is mistaken. Reading the "maximum punishment" clause as referring to the statutory maximum punishment would not necessarily result in harsher penalties for juveniles. Juveniles and adults who commit involuntary manslaughter can both be sentenced to three years' confinement. The difference between the two is that the Sentencing Guidelines apply to adult offenders, so the district court may need to depart upward from the Guidelines range in order to confine an adult for three years. By the same token, however, a district court would need to depart downward in order to sentence an adult convicted of manslaughter to a term of imprisonment below the Guidelines range, while a court could impose the same sentence on a juvenile without the need for a departure. The Sentencing Guidelines limit the discretion with respect to adult offenders that the district courts previously enjoyed, but do so in *both* directions —upward and downward—without affecting the maximum punishment that can be imposed under the statute of conviction. A juvenile committed under Section 5037 thus is not necessarily in a worse position than an adult sentenced under the Sentencing Guidelines.[9]

In any event, it would not be unconstitutional for a juvenile to be exposed to or committed for a longer period of confinement than an adult for the same offense. Juvenile offenders are detained in different

[9] In fact, a juvenile committed under Section 5037 is in a *better* position than an adult who is sentenced under the Sentencing Guidelines, because a juvenile committed under Section 5037 is not subject to a postcustody term of supervised release after completing his commitment period. Compare 18 U.S.C. 5037(b) and (c) with 18 U.S.C. 3583 and Sentencing Guidelines § 5D1.1.

settings, for different reasons, and under a different criminal justice system than adult offenders. See *Marco L.*, 868 F.2d at 1122-1124. Accordingly, there is no inherent inequity in providing different periods of detention for juveniles than for adult offenders. For example, because of the rehabilitative purposes and programs of the Youth Corrections Act, 18 U.S.C. 5005-5024 (1982) (repealed by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, § 218(a)(8), 98 Stat. 2027), the courts consistently held that it did not violate equal protection principles or the Due Process Clause for an offender sentenced under that Act to be subjected to a period of custody and subsequent supervision that exceeded the maximum sentence imposable on an adult for the same offense. See *United States* v. *Lowery*, 726 F.2d 474, 477-478 (9th Cir. 1983), cert. denied, 469 U.S. 837 (1984); *United States* v. *Donelson*, 695 F.2d 583, 588-591 (D.C. Cir. 1982) (Scalia, J.); *United States* v. *Van Lufkins*, 676 F.2d 1189, 1193-1194 (8th Cir. 1982); *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.); *Cunningham* v. *United States*, 256 F.2d 467, 472-473 (5th Cir. 1958). In sum, there is no ground in either the language or purpose of Section 5037 to limit the sentence that can be imposed on juvenile offenders to the presumptive sentencing range set forth in the Sentencing Guidelines.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APRIL 1991

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 90-5048

UNITED STATES, APPELLEE

v.

R. L. C., JUVENILE MALE, APPELLANT

Appeal from the United States District Court
for the District of Minnesota

Submitted: August 14, 1990
Filed: September 12, 1990

Before LAY, Chief Judge; HEANEY and BRIGHT, Senior Circuit Judges.

HEANEY, Senior Circuit Judge.

R.L.C., a juvenile, appeals from the district court's finding of juvenile delinquency for involuntary man-

slaughter pursuant to 18 U.S.C. §§ 5031, 1112(b), and 1153. He also appeals from a sentence of three years detention in a federal juvenile correctional facility. We affirm the finding of juvenile delinquency but vacate R.L.C.'s sentence and remand to the district court for resentencing.

BACKGROUND

R.L.C., 16, was charged in a one-count information with involuntary manslaughter on the Red Lake Indian Reservation for causing the death of LaTesha Lynn Mountain while driving a car in a reckless manner while intoxicated.

Following an evening of heavy drinking, R.L.C. and another juvenile, James White, Jr., stole a car on the Red Lake Reservation. Shortly after the car was stolen, a witness saw it rear-end a car driven by Deborah Garrigan while travelling east on Highway 1 in Red Lake. Mountain, Garrigan's daughter, died from head injuries she received when she was thrown from the back seat to the front seat of Garrigan's car during the accident. The stolen car was later found in flames in the woods southwest of the accident scene.

R.L.C. and White both admitted drinking, stealing the car, and driving it at some point during the evening. Both denied having driven the car, however, at the time the accident occurred. Three witnesses, including White, placed R.L.C. behind the wheel at or immediately before the time of the accident. R.L.C. stated that he was sleeping in the passenger seat when the accident occurred, and did not awaken until the car crashed and ignited in the woods.

Following a trial to the court, the district court found that R.L.C. had been driving the car while in-

toxicated and in a reckless manner at the time of the accident which caused Mountain's death and that this conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a). The district court adjudged R.L.C. to be a juvenile delinquent under 18 U.S.C. § 5031.

At sentencing, the prosecution requested that R.L.C. receive the statutory maximum penalty for involuntary manslaughter under 18 U.S.C. § 1112 (b), three years. The district court acceded to the request and sentenced R.L.C. to three years detention at the Missouri River Adolescent Center in Chamberlain, South Dakota. R.L.C. appeals.

DISCUSSION

R.L.C. raises two issues on appeal. He claims that the evidence at trial was insufficient to prove beyond a reasonable doubt that he drove the car at the time of the accident. After carefully reviewing the record, we believe the trial testimony adequately supports the district court's finding that R.L.C. was driving the car when the accident occurred. Accordingly, R.L.C.'s sufficiency of the evidence claim is without merit.

R.L.C. also claims that the district court erred in sentencing him to the three-year maximum statutory penalty for involuntary manslaughter when an adult sentenced for the same offense under the sentencing guidelines would have received a maximum sentence of only twenty-one months.

As a juvenile delinquent, R.L.C. was sentenced under 18 U.S.C. § 5037. Section 5037(c) states:

> The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—
>
> > (A) the date when the juvenile becomes twenty-one years old; or
> >
> > (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult[.]

18 U.S.C. § 5037(c)(1) (1988).

R.L.C. argues that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" means the maximum sentence an adult could receive under the sentencing guideline for the same offense. Guideline section 2A1.4(a)(2) provides a base offense level of 14 for involuntary manslaughter caused by reckless conduct. At a criminal history category of I, a base offense level of 14 yields a sentencing range of 15-21 months. R.L.C. therefore argues that his sentence of three years violates 18 U.S.C. § 5037(c)(1)(B).

The government argues that "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" refers to the statutory maximum sentence for the particular offense committed. The maximum sentence for involuntary manslaughter under 18 U.S.C. § 1112 is three years. 18 U.S.C. § 1112(b) (1988). The government argues that R.L.C.'s three-year sentence is the same as the maximum term of imprisonment an adult could have received if convicted of the same offense, and that the sentence therefore is permitted under 18 U.S.C. § 5037(c)(1)(B).

Section 5037 provides no definition of "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." In light of this failure, we must determine the intent of Congress in enacting section 5037(c)(1)(B) to resolve its ambiguity. *See United States v. Jones*, 811 F.2d 444, 447 (8th Cir. 1987).

In construing a statute to ascertain its drafters' intent, we look first to the language of the statute itself, then to its legislative history. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984). As further aids in the determination of legislative intent, we may also properly consider a statute's subject matter, the object to be accomplished, the purpose to be served, the underlying policies, and the consequences of various interpretations. *Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325, 1332 (8th Cir. 1985). An examination of all these factors persuades us that Congress did not intend juvenile delinquents ordinarily to be subject to penalties harsher than those received by adults convicted of the same offense.

Section 5037(c)(1)'s language expresses a preference for juvenile sentences which are the lesser of the period of time between sentencing and the juvenile's twenty-first birthday and "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C. § 5037(c) (1988). The phrase "if *the juvenile* had been tried and convicted as an adult" suggests that the sentencing court should focus on the actual maximum sentence the particular juvenile in question would have been subject to but for his age, considering those individualized, subjective factors that would be relevant to sentencing the same individual as an adult. Had R.L.C. been tried for and

convicted of involuntary manslaughter as an adult, he would have been sentenced under the sentencing guidelines, which provide a maximum sentence of 21 months for an individual with R.L.C.'s criminal history. The sentencing guidelines establish the permissible maximum and minimum sentence in all cases except those in which the sentencing court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence [above or below the guideline range]." 18 U.S.C. § 3553(b) (1988).

The sentencing guidelines themselves do not apply to individuals sentenced as juveniles. *See* United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988). Section 5037 provides, however, that after a finding of juvenile delinquency, the court should consider any pertinent policy statements promulgated by the Sentencing Commission in determining the disposition appropriate to the offense. 18 U.S.C. § 5037(a) (1988). Using the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences. Using the upper limit of the applicable guideline sentencing range as the maximum sentence a juvenile could receive thus would further section 5037(c)'s goal of avoiding harsher penalties for juvenile offenders than for similarly situated adults.

Section 5037's legislative history also suggests that Congress intended the "maximum term of imprisonment" in subsection (C)(1)(B) to be the maximum

term the juvenile in question actually could have received if sentenced as an adult under the guidelines, rather than the statutory maximum sentence for the offense committed.

Section 5037(c)(1)(B) was amended as part of the Comprehensive Crime Control Act of 1984 (CCCA), the same legislation that authorized the establishment of the sentencing guidelines. *See* Pub. L. No. 98-473, Title II, 98 Stat. 1976 (1984).[1] This legislation made sweeping reforms in the sentencing of both adult and juvenile federal offenders. The CCCA's sentencing reform policies and goals, when considered in conjunction with other changes the CCCA made in the disposition of juvenile offenders, persuade us that Congress did not intend the real time served by ju-

---

[1] The CCCA's legislative history states that: "[p]roposed 18 U.S.C. 5037(c) provides the maximum periods for official detention of a juvenile found to be a juvenile delinquent." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. The 1984 amendment to section 5037(c)(1)(B) differed slightly from the current version of the statute. A 1986 amendment, which took effect on November 1, 1987, deleted the words "by section 3581(b)" following the phrase "maximum term of imprisonment that would be authorized." *See* Pub. L. No. 99-646, § 21(a)(2) (1986) (cited in 18 U.S.C.A. § 5037 historical and statutory notes (West Supp. 1990)). Section 3581(b), also enacted as part of the CCCA, sets forth the maximum authorized terms of imprisonment for nine classes of federal felonies and misdemeanors. 18 U.S.C. § 3581(b) (1988). The import of the 1986 amendment is that Congress reconsidered and rejected establishing these statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive. The language of the 1984 amendment also suggests that if Congress wished to subject juveniles to the maximum sentences authorized by particular statutes, it knew how to say so.

venile offenders to exceed the real time that would be served by adults convicted of similar crimes.

The CCCA sought to establish a comprehensive and consistent system of sentencing that would promote fairness by eliminating unwarranted sentence disparity. S. Rep. No. 225, 98th Cong., 2d Sess. 50-52, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3133-35; *see also* U.S.S.G. ch. 1, pt. A, § 3 The Basic Approach (policy statement) (Congress' goals in sentencing reform were to achieve honesty, uniformity, and proportionality). Additionally, the legislation sought to promote certainty in sentencing by abolishing the parole system in federal law. *See* Pub. L. No. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984); S. Rep. No. 225, 98th Cong., 2d Sess. 56-58, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3239-41.

The CCCA's legislative history notes that the amended section 5037(c) "parallels the 1974 Act provision set forth in current law for juveniles under 18 at the time of the proceeding." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. Juveniles sentenced under the forerunner of current section 5037(c)(1)(B) were immediately eligible for parole. 18 U.S.C. § 5041 (1982) (repealed effective Nov. 1, 1987). The CCCA eliminated the possibility of parole for juveniles, meaning that each sentence imposed under section 5037(c)(1)(B) for offenses committed after November 1, 1987 represents the period of time the sentenced juvenile actually will be incarcerated. *See* S. Rep. No. 225, 98th Cong., 2d Sess. 156, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3339 ("It is expected that the time set at the disposition hearing for a juvenile placed in the custody of the Attorney

General pursuant to 18 U.S.C. 5037(b) will represent the real time to be spent by the juvenile in a manner similar to that for adult offenders under the bill.").

Under the law in existence prior to the CCCA, both juveniles and adults were subject to the statutory maximum sentence provided in the statute defining the offense. Both juveniles and adults were also eligible for parole; juveniles immediately on being sentenced, and adults after having served one-third of their sentences. *See* 18 U.S.C. §§ 5041, 4205 (1982) (repealed effective Nov. 1, 1987). After November 1, 1987, the effective date of the CCCA's sentencing reforms, adults were subject to the maximum sentences provided in the sentencing guidelines and were no longer eligible for parole. Juveniles were also no longer eligible for parole. The drafters of amended section 5037(c)(1)(B) intended its operation to parallel prior law. Accordingly, after November 1, 1987, juveniles sentenced under the amended statute should be subject to maximum, real time sentences no greater than those which adult offenders could receive under the sentencing guidelines.

Allowing a juvenile sentenced under section 5037(c)(1)(B) to remain subject to the pre-guideline statutory maximum penalty provided for the offense committed would produce juvenile sentences inconsistent with those received by adult offenders and relatively harsher than those to which juveniles were subject before November 1, 1987. It seems unlikely that Congress would seek to reduce sentence disparity and to increase certainty by creating a system under which juvenile offenders would automatically become subject to the real time equivalent of pre-guidelines statutory maximum sentences while similarly situated adults would ordinarily be subject only

to the maximum guideline sentence for the same offense.

Once the sentencing guidelines took effect, Congress intended the statutory maximum sentences prescribed in 18 U.S.C. § 3581(b), *see supra* note 1, to represent "the greatest period the Congress should allow a judge to impose for an offense committed under the most egregious of circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 114, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3297. Similarly, the guidelines were to reserve the upper range of the maximum sentence "for offenders who repeatedly commit offenses or those who commit an offense under particularly egregious circumstances." *Id.* The CCCA's legislative history notes that these statutory maximum penalties were "no more intended to indicate the actual sentence a judge is expected to impose in each case than are the analogous provisions of current Federal statutes that also customarily set forth only the maximum limit on the judge's discretion." *Id.*

The Senate Judiciary Committee was also critical of existing statutory maximum penalties, suggesting that they could contribute to disparity and unfairness in sentencing. *See id.* at 39, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3222 ("These maximums are usually prescribed with little regard for the relative seriousness of the offense as compared to similar offenses."); *id.* at 87, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3270 ("Current maximum penalties are set at very uneven levels, and some are so inconsistent with the relative seriousness of the offense that the Sentencing Commission will probably find it necessary to recommend some amendments before sentencing guidelines are in place.").

These experts indicate that Congress intended statutory maximum penalties after the effective date of the sentencing guidelines to serve only as an upper limit on judicial discretion and to be applied to adults only in relatively rare and egregious circumstances. The guidelines' structure reflects this intent. For example, an adult convicted of involuntary manslaughter could be sentenced under the guidelines to the statutory maximum of three years imprisonment only if he had a criminal history category of V, representing the equivalent of four prior felony convictions.

Given the CCCA's goals of promoting consistency, uniformity, and fairness in sentencing and the relative disfavor in which its drafters held existing statutory maximum penalties, the interpretation of section 5037(c)(1)(B) which the government urges seems clearly wrong. If we were to adopt this construction, *any* juvenile adjudicated a delinquent for committing involuntary manslaughter could be sentenced to three years imprisonment with no possibility of parole. An adult convicted of the same offense, however, could receive the same sentence *only* if he had an extensive criminal record or if his commission of the offense included aggravating factors sufficient to increase his base offense level by five levels under the sentencing guidelines. *See* U.S.S.G. ch.5, pt. A—Sentencing Table. Such disparate results seem particularly unreasonable in light of the guidelines' admonition that age is not ordinarily a factor relevant to decisions among sentencing options. *See id.* § 5H1.1 (policy statement).

Rules of statutory construction also counsel against adopting an interpretation of section 5037(c)(1)(B) that would subject juveniles to the maximum statutory penalty for the offense committed. Criminal

statutes must be strictly construed. *See Dowling v. United States*, 473 U.S. 207, 213 (1985).[2] The rule of lenity states that a court cannot interpret a federal criminal statute "so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). This principle of construction applies to sentencing provisions as well as to substantive criminal statutes. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *Rowe v. Lockhart*, 736 F.2d 457, 461 (8th Cir. 1984). The rule of lenity favors the statutory construction that yields the shorter sentence.

Section 5037(c)(1)(B)'s language and legislative history, the policies underlying federal sentencing reform, the consequences of the possible interpretations, and the rule of lenity require us to adopt the construction of the statute that subjects juveniles sentenced under it to the lesser penalty; in this case, the construction urged by R.L.C. We hold that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and con-

[2] Although an adjudication of juvenile delinquency under 18 U.S.C. § 5031 is a determination of status rather than a criminal conviction, *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.), *cert. denied*, 449 U.S. 987 (1980), the Federal Juvenile Delinquency Act entitles a juvenile to all rights that would be accorded an adult in a criminal prosecution except that right to a grand jury indictment. S. Rep. No. 93-1011, 93d Cong., 2d Sess. 38, *reprinted in* 1974 U.S. Code Cong. & Admin. News 5321. Because statutes imposing penalties on juvenile delinquents involve deprivations of liberty similar to those attendant on criminal conviction, they should be construed no less strictly than statutes imposing criminal sanctions on adults.

victed as an adult" prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines.[3] This holding requires a particularized, subjective determination in each case of the upper limit of the appropriate guideline range. In cases involving aggravating circumstances not contemplated by the guidelines, a court sentencing a juvenile delinquent could make a finding that the prescribed range did

[3] Our holding conflicts with that of the Ninth Circuit in *United States v. Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), *cert. denied*, 110 S. Ct. 369 (1989). We find that decision's reasoning unpersuasive for the reasons discussed above, and believe that its holding will lead to inequitable results inconsistent with the goals of federal sentencing reform.

The Ninth Circuit found persuasive language in 18 U.S.C. § 3559, which deals with the classification of federal offenses under the sentencing guidelines. Subsection (a) provides that offenses which do not contain a letter classification can be classified based upon the length of imprisonment authorized by the statute defining the offense. The *Marco* court points to section 3559(b), which is entitled "Effect of Classification," and states that "[a]n offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the statute describing the offense." The *Marco* court reasoned that this language shows that "Congress has defined the 'maximum term of imprisonment' to be that term prescribed by the statute defining the offense." *Id.* at 1124. The sentence in section 3559(b), however, refers *only* to language in section 3559(a), and seeks to establish what no one contests: that no matter what letter classification an offense is given, the maximum term of imprisonment a judge can impose is the term listed in the statute defining the offense. Section 3559(b) was not meant to function as an overaching definition of "maximum term of imprisonment" for the entire federal criminal code.

not adequately reflect the severity of the offense, and could deviate from that range accordingly.

CONCLUSION

We vacate the sentence imposed by the district court and remand this case for resentencing consistent with this opinion.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Crim. 4-89-175

UNITED STATES OF AMERICA, PLAINTIFF

v.

R. L. C., a JUVENILE, DEFENDANT

MEMORANDUM AND ORDER

Jerome G. Arnold, United States Attorney, and Jeanne J. Graham, Assistant U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN 55401, for plaintiff.

Katherian D. Roe, 174 U.S. Courthouse, Minneapolis, MN 55401, for defendant.

This matter is before the Court on a certification filed by the government pursuant to 18 U.S.C. § 5032 charging defendant, a juvenile within the meaning of 18 U.S.C. § 5031, and an Indian, with involuntary manslaughter pursuant to 18 U.S.C. §§ 1112 and 1153, such violation constituting "juvenile delinquency" pursuant to 18 U.S.C. § 5031.

Based on all the evidence presented at trial, and on the factual stipulations of counsel, the Court finds that the government has proven beyond a reasonable doubt that:

1. defendant was the driver of the vehicle which in the early morning hours of November 5, 1989 col-

lided with a vehicle in which LeTesha Lynn Mountain was a passenger;

2. LeTesha Lynn Mountain died as a result of injuries sustained as a result of that collision;

3. defendant was driving the motor vehicle involved in the collision without the authorization of the vehicle's owner;

4. at the time of the collision defendant was intoxicated;

5. at the time of the collision defendant was operating the motor vehicle in a reckless and unsafe manner in excess of the applicable speed limit;

6. such conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a);

7. at the time of the incident, defendant was an Indian, residing on and within the Red Lake Indian Reservation within Indian country in the State and District of Minnesota;

8. at the time of the incident defendant was a juvenile within the meaning of 18 U.S.C. § 5031.

Pursuant to the foregoing findings, IT IS HEREBY ADJUDGED that defendant is delinquent within the meaning of 18 U.S.C. § 5031. Defendant shall remain in the custody of his uncle, Donald Cook, until the Court holds a dispositional hearing pursuant to 18 U.S.C. § 5037.

/s/ Harry H. MacLaughlin
JUDGE HARRY H. MACLAUGHLIN
United States District Court

DATED: December 26, 1989

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 90-5048MN

UNITED STATES, APPELLEE

vs.

R. L. C., JUVENILE MALE, APPELLANT

ORDER DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Appellee's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc. Judges Bowman, Wollman, Magill and Beam would have granted the petition.

Petition for rehearing by the panel is also denied.

December 18, 1990

ORDER ENTERED AT THE DIRECTION OF THE COURT

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20430

ORIGINAL IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO. 90-1577

RECEIVED
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SUPREME COURT, U.S.

UNITED STATES OF AMERICA,

Petitioner,

v.

R.L.C., a juvenile,

Respondent.

MOION FOR LEAVE TO

PROCEED

IN FORMA PAUPERIS

Pursuant to Title 18, United States Code, Section 3006A(d)(6) and Rule 46 of this Court, respondent asks leave to file the attached Respondent's Brif in Opposition to the petition for Writ of Certiorari from the United States Court of Appeals for the Eighth Circuit without prepayment of fees or costs and to proceed in forma pauperis. Respondent was represented by counsel appointed pursuant to 18 U.S.C. § 3006A in the district court and on appeal to the Eighth Circuit Court of Appeals.

Dated: May 29, 1991

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Federal Public Defender
District of Minnesota
Attorney ID No. 98395
174 U.S. Courthouse
110 South Fourth Street
Minneapolis, MN 55401

Attorney for Respondent

KATHERIAN D. ROE
Assistant Federal Defender

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

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UNITED STATES OF AMERICA,

Petitioner,

v.

R.L.C., a juvenile,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO. 90-1577

UNITED STATES OF AMERICA,

Petitioner,

v.

R.L.C., a juvenile,

Respondent.

JURISDICTION

The judgement of the court of appeals was entered on September 12, 1990. A petition for hearing and suggestion for rehearing en banc was denied on December 18, 1990. App., infra, 15a. On March 12, 1991, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including April 17, 1991. The petitioner asserts that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1). Respondent asserts that the Court lacks the jurisdiction to hear this case because the case is moot. Respondent's mootness argument will be fully discussed in the portion of the brief entitled, "Reasons For Denying the Petition".

STATEMENT

1. Respondent, a juvenile, was charged in a one-count information with involuntary manslaughter. The charges arose from a car accident which had occurred on the Red Lake Indian Reservation. That car accident had resulted in the death of La Tesha Mountain. La Tesha had died as a result of head and neck injuries that she received when she was thrown from the back seat to the front seat of the car during the accident. App., infra, 2a.

2. The car which struck the vehicle that La Tesha Mountain was riding in, was a stolen Chevrolet Camaro occupied by respondent and James White, Jr. Both admitted to an evening of heavy drinking which had resulted in their stealing the car and driving it around the reservation. App., infra, 2a.

3. Following a trial to the court, the district court found that respondent had been driving the car while intoxicated and in a reckless manner at the time of the accident which resulted in Mountain's death. The court found that this conduct constituted involuntary manslaughter, in violation of 18 U.S.C. 1112(a). The court found respondent to be a juvenile delinquent under 18 U.S.C. 5031. App., infra, 2a-3a.

4. On January 24, 1990, the court sentenced respondent to three years detention to be served at the Missouri River Adolescent Center in Chamberlain, South Dakota. App., infra, 3a.

5. Respondent appealed. The court of appeals upheld the finding of delinquency, but vacated the sentence and remanded the case for resentencing. App., infra, 1a-14a. It was the court's

determination that the thirty-six month sentence that the respondent had received, exceeded the period of confinement that he could have received if he "had been tried and convicted as an adult". Thus the thirty-six month sentence imposed was in violation of 18 U.S.C. 5037(c)(1). App., infra, 3a-14a. The court summarized its findings in the following way: "We hold that the phrase 'maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult' prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines." App., infra, 12a-13a.

6. The government filed a petition for rehearing and suggestion for rehearing en banc. The panel denied the petition for rehearing and the full court declined the suggestion for rehearing en banc. App., infra, 17a.

7. On January 25, 1991, the district court resentenced the respondent to a term of eighteen months. App., infra, 18a.

REASONS FOR DENYING THE PETITION

The Petitioner failed to petition for a stay of the Eighth Circuit Court of Appeals mandate in this case. As a result, the respondent was resentenced on January 24, 1991, and as of March 20, 1991 had completed his sentence. There are no collateral consequences that could result from the ruling the Petitioner asks this Court to make. Therefore, this case is moot.

The Eighth Circuit Court of Appeals fully considered and correctly decided the issue presented in the Petition for Writ of Certiorari. In the petition, the Petitioner has overstated the opinion set forth by the court of appeals. The court did not hold that the sentencing guidelines "must" be applied when determining a juvenile's sentence. Rather, the court recognized that 18 U.S.C. § 5037 prohibits a court from sentencing a juvenile to a term of imprisonment greater than he could have received if he had been tried and convicted as an adult. In an effort to comply with this provision, the court of appeals held that the sentencing court must look to the guidelines as a guide to determine what the maximum sentence for an adult would have been. Once that determination has been made, the sentencing court may then determine the appropriate sentence for the juvenile.

1. This Court lacks jurisdiction to consider this case. On December 26, 1989, the United States District Court Judge Harry H. MacLaughlin adjudged R.L.C. to be a juvenile delinquent under 18 U.S.C. § 5031. Pursuant to 18 U.S.C. § 5037 the court sentenced R.L.C. to a term of thirty-six months "official detention", to be

served at a juvenile facility. Respondent appealed to the Eighth Circuit Court of Appeals. On September 12, 1990, the Court of Appeals vacated the sentence imposed by the District Court and remanded the case for resentencing. The government filed a petition for rehearing and suggestion for rehearing en banc, which was denied by the Court on December 18, 1990. However, the government did not petition the appellate court for a stay of the mandate under Rule 41(b) of the Rules of Appellate Procedure. On January 25, 1991, the district court resentenced the respondent to a term of 18 months. On March 20, 1991, respondent was released from custody, having completed his sentence. The government filed its petition for writ of certiorari on April 17, 1991.

Respondent has completed his sentence. Further, there are no collateral consequences that could result from the ruling the government asks this Court to make. The case is therefore moot.

In St. Pierre v. United States, 319 U.S. 41, 63 S.Ct. 910 (1943), this Court held that if a petitioner has already served his or her sentence, "the case is moot because, after petitioner's service of his sentence and its expiration, there was no longer a subject matter on which the judgment of this Court could operate." St. Pierre, 319 U.S. at 42, 63 S.Ct. at 911. The Court also held that the petitioner could have taken steps to preserve his case, but that "he did not apply to this Court for a stay or a supersedeas," an avenue likewise available to the Petitioner in this case. Id. The Court recognized two situations overriding mootness where the imposed sentence had been served: 1) where the

petitioner, through no fault of his own, could not have brought the case prior to the completion of the sentence; and 2) where further penalties could be imposed as a result of the satisfied judgment (the "collateral consequences" exception). Id. 319 U.S. at 43, 63 S.Ct. at 911.

In Sibron v. New York, 392 U.S. 40, 53, 88 S.Ct. 1889, 1897 (1968), the Court expanded on the St. Pierre exceptions, stating that a criminal case becomes moot by 1) the full service of a prison sentence, if 2) no collateral legal consequences will be imposed on the basis of the challenged conviction. In Sibron, the petitioner could not have obtained review of his conviction before completing his six month sentence for two reasons. First, New York law prohibited bail for the offense of which Sibron had been convicted. Second, a stay of mandate or supersedeas "may issue only in connection with an appeal actually taken," and Sibron did not have the opportunity to appeal his case prior to serving his sentence. Sibron, 392 U.S. at 53 n.13, 88 S.Ct. at 1897 n.13 (citing Ex parte Ralston, 119 U.S. 613, 7 S.Ct. 317 (1887)).

In Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 332 (1977), this Court stated that completion of a sentence does not necessarily preclude the government from petitioning for writ of certiorari:

> If the prospect of the State's visiting such collateral consequences on a criminal defendant who has served his sentence is a sufficient burden as to enable him to seek reversal of a decision affirming his conviction, the prospect of the State's inability to impose such a burden following a reversal of the conviction of a criminal defendant in its own courts must likewise be sufficient to enable the State to obtain review of its claims on the

> merits here. In any future state criminal proceedings against respondent, this conviction may be relevant to setting bail and length of sentence, and to the availability of probation.

Id. 434 U.S. at 109 n.3, 98 S.Ct. at 332, n.3 (citations omitted). This line of decisions, including Sibron and Mimms, deal with cases where reversal of the underlying conviction is at issue. They address the collateral consequences arising from any conviction; specifically bail, length of subsequent sentences and the availability of probation. In the present case, the Eighth Circuit did not reverse the District Court's finding of juvenile delinquency. Rather, the Court of Appeals merely remanded for resentencing. Respondent's sentence was reduced from 36 months to 18 months. The collateral consequences arising from the District Court's finding of juvenile delinquency were unaffected by the appeal. Thus, the concern enunciated in Mimms -- that the government not be foreclosed by the doctrine of mootness from obtaining review of a reversed conviction where collateral consequences followed from that conviction -- simply does not exist in the case at bar.

Petitioner could have acted to prevent mootness. However, by failing to petition for a stay of the Eighth Circuit's mandate before filing its petition for writ of certiorari, petitioner allowed respondent to complete his full sentence. Rule 41(b) of the Rules of Appellate Procedure is a measure by which a petitioner may stay the mandate of an appellate court during the pendency of review by the Supreme Court. The stay can continue until final disposition by the Supreme Court. Rule 41(b), Federal Rules of

Appellate Procedure. A stay is appropriate when the petitioner would be adversely affected if the judgment of the lower court were carried out prior to Supreme Court review.

Based on petitioner's failure to request a stay under Rule 41(b), the mandate was issued and respondent was resentenced by the district court. Respondent thus completed his sentence prior to the government's filing of the petition. In other words, petitioner could have prevented mootness, but failed to take the appropriate procedural steps to do so.

2. In its opinion, the Eighth Circuit recognized that its holding conflicted with the Ninth Circuit opinion in United States v. Marco L., 868 F.2d 1121, 1124 (9th Cir.), cert. denied 110 S.Ct. 369 (1989). The only apparent conflict is between the Eighth and Ninth Circuits. This Court's policy of "letting tolerable conflicts go unaddressed until more than two courts of appeals have considered a question" should apply here. Justice Brennan, Some Thoughts on the Supreme Court's Workload, 66 Judicature 230, 233 (1983).

> The existence of differing rules of law in different sections of our great country is not always an intolerable evil. . . . It would be better, of course, if federal law could be applied uniformly in all federal courts, but experience with conflicting interpretations of federal rules may help to illuminate an issue before it is finally resolved and thus may play a constructive role in the lawmaking process. The doctrine of judicial restraint teaches us that patience in the judicial resolution of conflicts may sometimes produce the most desirable result.

Justice Stevens, Some Thoughts on Judicial Restraint, 66 Judicature 177, 183 (1982). See also McCray v. New York, 461 U.S. 961, 963 (1983) (Stevens, J.) (certiorari denied where issues needed further development by lower courts); Gilliard v. Mississippi, 464 U.S. 867 (1983) (Marshall, J. dissent from denial of certiorari) (Court should have postponed consideration of the issue until federal courts had experimented with a solution to the problem).

The time is not ripe for the Court to resolve the apparent conflict. As in these cases, awaiting further litigation in the lower courts is likely to produce a consensus or a satisfactory majority view among the circuits.

The Court has often denied certiorari even when faced with direct conflicts on important issues. In Brown Transport Corp. v. Atcon, Inc., 439 U.S. 1014 (1978), Justice White, in his dissent, detailed 14 cases on the list of the opening day of the 1978 Term in which the Court refused to grant certiorari despite conflicts between appellate courts or with the Court's precedents. See also Greco v. Orange Memorial Hospital Corp., 423 U.S. 1000 (1975); Kamberos v. GTE Automatic Electric Inc., 454 U.S. 1060 (1981); Chelsea House Publishers v. Nicholstone Book Bindery Inc., 455 U.S. 994 (1982); Towson v. United States, 455 U.S. 1006 (1982).

Further, the issue in this case is not likely to arise frequently. The number of juvenile delinquency proceedings in federal courts is significantly less than 1% of the total number of federal criminal cases heard each year. In 1990, there were a total of 47,335 federal criminal cases versus 168 juvenile delinquency proceedings.[1] Thus, the apparent conflict involved in this case does not have widespread significance.

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[1] In 1986, there were a total of 41,420 federal criminal cases versus 129 juvenile proceedings; in 1987, 43,280 versus 81 in 1988, 43,688 versus 132; and in 1989, 46,795 versus 172. Administrative Office of the U.S. Courts, Division of Statistics Federal Judicial Workload Statistics, Table D (December 31, 1986 - December 31, 1990).

3. The Eighth Circuit Court of Appeals fully considered and correctly decided the issue presented in this case. The court of appeals' analysis of 18 U.S.C. § 5037 and the related legislative history clearly indicates that Section 5037(c)(1) prohibits a court from sentencing a juvenile to a term of imprisonment that would be greater than the term he could have received if he had been an adult sentenced under the sentencing guidelines.

a. In an effort to resolve the issue presented, the Eighth Circuit began with an analysis of Section 5037. However, because Section 5037 provided no definition of the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult", the court also undertook an extensive analysis of Congress' intent in enacting Section 5037(c)(1)(B).

The language of Section 5037 provides that a juvenile's sentence must be the lesser of the period of time between sentencing and the juvenile's twenty-first birthday and "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C.§ 5037(c) (1988). The court reasoned that the language "if the juvenile had been tried and convicted as an adult" suggested that in determining the maximum sentence that the juvenile would be subject to, the sentencing court should consider "those individualized, subjective factors that would be relevant to sentencing the same individual as an adult." App., infra, 5a.

If R.L.C. had been an adult the sentencing guidelines would have applied. It is not disputed that the sentencing guidelines themselves do not apply to individuals sentenced as juveniles. See United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988). However, Section 5037 specifically provides that the sentencing court should consider "any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994" when determining the disposition that would be appropriate for the offense. 18 U.S.C. 5037(a) (1988).

By looking to the guidelines in an effort to determine what the applicable guideline range would be if the juvenile offender was in fact an adult, the sentencing court would then use the resulting range as a guide in sentencing the juvenile. As stated by the Eighth Circuit, this would "eliminate unwarranted disparity between juvenile and adult sentences" and "further Section 5037(c)'s goal of avoiding harsher penalties for juvenile offenders than for similarly situated adults." App., infra, 6a.

Petitioner argues that the most "natural" reading of the "maximum punishment" clause in 13 U.S.C. 5037(c)(1) refers to the "maximum term of imprisonment authorized in the law defining the offense." Petition at 8. There is nothing natural about this interpretation. If in fact this was Congress' intent, it would have been simple for the clause to have been worded in exactly that way. However, it is clear from the language of the statute and the legislative history that what Congress intended was that a juvenile

offender not be subject to a longer term of imprisonment than he could have received "if he had been tried and convicted as an adult." This is what the clause states, and is the most natural reading of the "maximum punishment" clause.

The Eighth Circuit conducted a detailed review and analysis of the legislative history of Section 5037 (c)(1)(B) and the Comprehensive Crime Control Act of 1984 (CCCA).[2] After a complete review and analysis, which will not be included in the text of respondent's brief,[3] the court determined that Congress had considered and rejected establishing statutory maximum sentences as the maximum sentence of imprisonment that a juvenile offender could receive.[4] The CCCA's legislative history indicates that upon the effective date of the sentencing guidelines, Congress intended the statutory maximum sentences prescribed in 18 U.S.C. § 3581 (b), to represent "the greatest period the Congress should allow a judge to impose for an offense committed under the most egregious of circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 114, reprinted in 1984 U.S. Code Cong. & Admin. News 3297. The guidelines were constructed to reserve the upper range of the maximum sentence "for offenders who repeatedly commit offenses or

[2]Section 5037 (c)(1)(B) was amended as part of the Comprehensive Crime Control Act. It was this legislation that authorized the establishment of the sentencing guidelines.

[3]The Eighth Circuit's analysis of the relevant legislative history is a lengthy one. In an effort to comply with Sup. Ct. R. 22.2, which encourages brevity, respondent refers the Court to Appendix A, pages 5a-12a.

[4] A brief discussion of the legislative history relating to this issue is contained in App., infra 7a, footnote 1.

those who commit an offense under particularly egregious circumstances." Id.

Under the government's interpretation of the "maximum punishment" clause of Section 5037, a sentencing court could sentence any juvenile adjudicated a delinquent for committing involuntary manslaughter to three years of imprisonment.[5] However, an adult could be sentenced to three years only if he had an extensive criminal background or had committed an offense which involved aggravating factors qualifying as grounds for an upward departure.[6] See U.S.S.G. ch.5, pt. A--Sentencing Table.

Promoting such a disparity in sentencing was not the legislative intent underlying Section 5037. Congress amended Section 5037 in 1986. The legislative history indicates that the purpose of the amendment was to ensure that juvenile offenders would not receive a more severe punishment than adult offenders. See S. Rep. No. 278, 99th Cong., 2d Sess 3 (1986).

b. The petitioner argues that under the Youth Corrections Act, 18 U.S.C. 5005-5024 (1982), the courts consistently held that it did not violate equal protection principles or the Due Process

[5]R.L.C. was originally sentenced to serve three years "official detention".

[6]For an adult offender with no criminal history to receive a sentence of three years imprisonment for the offense of involuntary manslaughter, the sentencing court would have to find aggravating factors sufficient to increase the base offense level by five levels.

Clause[7] for a juvenile offender to be sentenced to a period of custody that exceeded the maximum possible for an adult who had committed the same crime. But in 1984 Congress implemented significant changes with respect to juvenile sentencing with the enactment of the Comprehensive Crime Control Act. The most significant change was that the CCCA repealed the Youth Corrections Act in its entirety. Pub.L. 98-473, Title II, 218(g), 98 Stat. 2031 (1984). And in making such changes, CCCA's explicit goal was to promote fairness, consistency and uniformity in sentencing.

If a Court were to adopt petitioner's reading of the "maximum punishment" clause, the essential purposes of the CCCA and Congress' directive would be undercut. Juveniles would be in jeopardy of being subjected to proportionally more severe and disparate sentences than adult offenders who committed the same offense. The Eighth Circuit gave careful consideration to the consequences of such an interpretation when it rejected the government's argument.

In summary, the Eighth Circuit's analysis of Section 5037(c)(1)(B) was both thorough and correct.

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[7]Respondent is not asserting that the sentencing disparity is a violation of equal protection or due process. Respondent is asserting that 18 U.S.C. section 5037 prohibits a sentencing court from sentencing a juvenile offender to a term of imprisonment greater than what he could have received if he had been tried and convicted as an adult.

CONCLUSION

For all of the reasons set forth, the petition should be denied.

Dated: May 23, 1991

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 90-5048

UNITED STATES, APPELLEE

v.

R. L. C., JUVENILE MALE, APPELLANT

Appeal from the United States District Court
for the District of Minnesota

Submitted: August 14, 1990
Filed: September 12, 1990

Before LAY, Chief Judge; HEANEY and BRIGHT, Senior Circuit Judges.

HEANEY, Senior Circuit Judge.

R.L.C., a juvenile, appeals from the district court's finding of juvenile delinquency for involuntary manslaughter pursuant to 18 U.S.C. §§ 5031, 1112(b), and 1153. He also appeals from a sentence of three years detention in a federal juvenile correctional facility. We affirm the finding of juvenile delinquency but vacate R.L.C.'s sentence and remand to the district court for resentencing.

BACKGROUND

R.L.C., 16, was charged in a one-count information with involuntary manslaughter on the Red Lake Indian Reservation for causing the death of LaTesha Lynn Mountain while driving a car in a reckless manner while intoxicated.

Following an evening of heavy drinking, R.L.C. and another juvenile, James White, Jr., stole a car on the Red Lake Reservation. Shortly after the car was stolen, a witness saw it rear-end a car driven by Deborah Garrigan while travelling east on Highway 1 in Red Lake. Mountain, Garrigan's daughter, died from head injuries she received when she was thrown from the back seat to the front seat of Garrigan's car during the accident. The stolen car was later found in flames in the woods southwest of the accident scene.

R.L.C. and White both admitted drinking, stealing the car, and driving it at some point during the evening. Both denied having driven the car, however, at the time the accident occurred. Three witnesses, including White, placed R.L.C. behind the wheel at or immediately before the time of the accident. R.L.C. stated that he was sleeping in the passenger seat when the accident occurred, and did not awaken until the car crashed and ignited in the woods.

Following a trial to the court, the district court found that R.L.C. had been driving the car while in-

toxicated and in a reckless manner at the time of the accident which caused Mountain's death and that this conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a). The district court adjudged R.L.C. to be a juvenile delinquent under 18 U.S.C. § 5031.

At sentencing, the prosecution requested that R.L.C. receive the statutory maximum penalty for involuntary manslaughter under 18 U.S.C. § 1112 (b), three years. The district court acceded to the request and sentenced R.L.C. to three years detention at the Missouri River Adolescent Center in Chamberlain, South Dakota. R.L.C. appeals.

DISCUSSION

R.L.C. raises two issues on appeal. He claims that the evidence at trial was insufficient to prove beyond a reasonable doubt that he drove the car at the time of the accident. After carefully reviewing the record, we believe the trial testimony adequately supports the district court's finding that R.L.C. was driving the car when the accident occurred. Accordingly, R.L.C.'s sufficiency of the evidence claim is without merit.

R.L.C. also claims that the district court erred in sentencing him to the three-year maximum statutory penalty for involuntary manslaughter when an adult sentenced for the same offense under the sentencing guidelines would have received a maximum sentence of only twenty-one months.

As a juvenile delinquent, R.L.C. was sentenced under 18 U.S.C. § 5037. Section 5037(c) states:

> The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—
>
> (A) the date when the juvenile becomes twenty-one years old; or
>
> (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult[.]

18 U.S.C. § 5037(c)(1) (1988).

R.L.C. argues that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" means the maximum sentence an adult could receive under the sentencing guideline for the same offense. Guideline section 2A1.4(a)(2) provides a base offense level of 14 for involuntary manslaughter caused by reckless conduct. At a criminal history category of I, a base offense level of 14 yields a sentencing range of 15-21 months. R.L.C. therefore argues that his sentence of three years violates 18 U.S.C. § 5037 (c)(1)(B).

The government argues that "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" refers to the statutory maximum sentence for the particular offense committed. The maximum sentence for involuntary manslaughter under 18 U.S.C. § 1112 is three years. 18 U.S.C. § 1112(b) (1988). The government argues that R.L.C.'s three-year sentence is the same as the maximum term of imprisonment an adult could have received if convicted of the same offense, and that the sentence therefore is permitted under 18 U.S.C. § 5037(c)(1)(B).

Section 5037 provides no definition of "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." In light of this failure, we must determine the intent of Congress in enacting section 5037(c)(1)(B) to resolve its ambiguity. *See United States v. Jones*, 811 F.2d 444, 447 (8th Cir. 1987).

In construing a statute to ascertain its drafters' intent, we look first to the language of the statute itself, then to its legislative history. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984). As further aids in the determination of legislative intent, we may also properly consider a statute's subject matter, the object to be accomplished, the purpose to be served, the underlying policies, and the consequences of various interpretations. *Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325, 1332 (8th Cir. 1985). An examination of all these factors persuades us that Congress did not intend juvenile delinquents ordinarily to be subject to penalties harsher than those received by adults convicted of the same offense.

Section 5037(c)(1)'s language expresses a preference for juvenile sentences which are the lesser of the period of time between sentencing and the juvenile's twenty-first birthday and "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C. § 5037(c) (1988). The phrase "if *the juvenile* had been tried and convicted as an adult" suggests that the sentencing court should focus on the actual maximum sentence the particular juvenile in question would have been subject to but for his age, considering those individualized, subjective factors that would be relevant to sentencing the same individual as an adult. Had R.L.C. been tried for and

convicted of involuntary manslaughter as an adult, he would have been sentenced under the sentencing guidelines, which provide a maximum sentence of 21 months for an individual with R.L.C.'s criminal history. The sentencing guidelines establish the permissible maximum and minimum sentence in all cases except those in which the sentencing court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence [above or below the guideline range]." 18 U.S.C. § 3553(b) (1988).

The sentencing guidelines themselves do not apply to individuals sentenced as juveniles. *See* United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988). Section 5037 provides, however, that after a finding of juvenile delinquency, the court should consider any pertinent policy statements promulgated by the Sentencing Commission in determining the disposition appropriate to the offense. 18 U.S.C. § 5037(a) (1988). Using the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences. Using the upper limit of the applicable guideline sentencing range as the maximum sentence a juvenile could receive thus would further section 5037(c)'s goal of avoiding harsher penalties for juvenile offenders than for similarly situated adults.

Section 5037's legislative history also suggests that Congress intended the "maximum term of imprisonment" in subsection (C)(1)(B) to be the maximum

term the juvenile in question actually could have received if sentenced as an adult under the guidelines, rather than the statutory maximum sentence for the offense committed.

Section 5037(c)(1)(B) was amended as part of the Comprehensive Crime Control Act of 1984 (CCCA), the same legislation that authorized the establishment of the sentencing guidelines. *See* Pub. L. No. 98-473, Title II, 98 Stat. 1976 (1984).[1] This legislation made sweeping reforms in the sentencing of both adult and juvenile federal offenders. The CCCA's sentencing reform policies and goals, when considered in conjunction with other changes the CCCA made in the disposition of juvenile offenders, persuade us that Congress did not intend the real time served by ju-

[1] The CCCA's legislative history states that: "[p]roposed 18 U.S.C. 5037(c) provides the maximum periods for official detention of a juvenile found to be a juvenile delinquent." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. The 1984 amendment to section 5037(c)(1)(B) differed slightly from the current version of the statute. A 1986 amendment, which took effect on November 1, 1987, deleted the words "by section 3581(b)" following the phrase "maximum term of imprisonment that would be authorized." *See* Pub. L. No. 99-646, § 21(a)(2) (1986) (cited in 18 U.S.C.A. § 5037 historical and statutory notes (West Supp. 1990)). Section 3581(b), also enacted as part of the CCCA, sets forth the maximum authorized terms of imprisonment for nine classes of federal felonies and misdemeanors. 18 U.S.C. § 3581(b) (1988). The import of the 1986 amendment is that Congress reconsidered and rejected establishing these statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive. The language of the 1984 amendment also suggests that if Congress wished to subject juveniles to the maximum sentences authorized by particular statutes, it knew how to say so.

venile offenders to exceed the real time that would be served by adults convicted of similar crimes.

The CCCA sought to establish a comprehensive and consistent system of sentencing that would promote fairness by eliminating unwarranted sentence disparity. S. Rep. No. 225, 98th Cong., 2d Sess. 50-52, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3133-35; *see also* U.S.S.G. ch. 1, pt. A, § 3 The Basic Approach (policy statement) (Congress' goals in sentencing reform were to achieve honesty, uniformity, and proportionality). Additionally, the legislation sought to promote certainty in sentencing by abolishing the parole system in federal law. *See* Pub. L. No. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984); S. Rep. No. 225, 98th Cong., 2d Sess. 56-58, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3239-41.

The CCCA's legislative history notes that the amended section 5037(c) "parallels the 1974 Act provision set forth in current law for juveniles under 18 at the time of the proceeding." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. Juveniles sentenced under the forerunner of current section 5037(c)(1)(B) were immediately eligible for parole. 18 U.S.C. § 5041 (1982) (repealed effective Nov. 1, 1987). The CCCA eliminated the possibility of parole for juveniles, meaning that each sentence imposed under section 5037(c)(1)(B) for offenses committed after November 1, 1987 represents the period of time the sentenced juvenile actually will be incarcerated. *See* S. Rep. No. 225, 98th Cong., 2d Sess. 156, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3339 ("It is expected that the time set at the disposition hearing for a juvenile placed in the custody of the Attorney

General pursuant to 18 U.S.C. 5037(b) will represent the real time to be spent by the juvenile in a manner similar to that for adult offenders under the bill.").

Under the law in existence prior to the CCCA, both juveniles and adults were subject to the statutory maximum sentence provided in the statute defining the offense. Both juveniles and adults were also eligible for parole; juveniles immediately on being sentenced, and adults after having served one-third of their sentences. *See* 18 U.S.C. §§ 5041, 4205 (1982) (repealed effective Nov. 1, 1987). After November 1, 1987, the effective date of the CCCA's sentencing reforms, adults were subject to the maximum sentences provided in the sentencing guidelines and were no longer eligible for parole. Juveniles were also no longer eligible for parole. The drafters of amended section 5037(c)(1)(B) intended its operation to parallel prior law. Accordingly, after November 1, 1987, juveniles sentenced under the amended statute should be subject to maximum, real time sentences no greater than those which adult offenders could receive under the sentencing guidelines.

Allowing a juvenile sentenced under section 5037 (c)(1)(B) to remain subject to the pre-guideline statutory maximum penalty provided for the offense committed would produce juvenile sentences inconsistent with those received by adult offenders and relatively harsher than those to which juveniles were subject before November 1, 1987. It seems unlikely that Congress would seek to reduce sentence disparity and to increase certainty by creating a system under which juvenile offenders would automatically become subject to the real time equivalent of pre-guidelines statutory maximum sentences while similarly situated adults would ordinarily be subject only

to the maximum guideline sentence for the same offense.

Once the sentencing guidelines took effect, Congress intended the statutory maximum sentences prescribed in 18 U.S.C. § 3581(b), *see supra* note 1, to represent "the greatest period the Congress should allow a judge to impose for an offense committed under the most egregious of circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 114, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3297. Similarly, the guidelines were to reserve the upper range of the maximum sentence "for offenders who repeatedly commit offenses or those who commit an offense under particularly egregious circumstances." *Id.* The CCCA's legislative history notes that these statutory maximum penalties were "no more intended to indicate the actual sentence a judge is expected to impose in each case than are the analogous provisions of current Federal statutes that also customarily set forth only the maximum limit on the judge's discretion." *Id.*

The Senate Judiciary Committee was also critical of existing statutory maximum penalties, suggesting that they could contribute to disparity and unfairness in sentencing. *See id.* at 39, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3222 ("These maximums are usually prescribed with little regard for the relative seriousness of the offense as compared to similar offenses."); *id.* at 87, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3270 ("Current maximum penalties are set at very uneven levels, and some are so inconsistent with the relative seriousness of the offense that the Sentencing Commission will probably find it necessary to recommend some amendments before sentencing guidelines are in place.").

These experts indicate that Congress intended statutory maximum penalties after the effective date of the sentencing guidelines to serve only as an upper limit on judicial discretion and to be applied to adults only in relatively rare and egregious circumstances. The guidelines' structure reflects this intent. For example, an adult convicted of involuntary manslaughter could be sentenced under the guidelines to the statutory maximum of three years imprisonment only if he had a criminal history category of V, representing the equivalent of four prior felony convictions.

Given the CCCA's goals of promoting consistency, uniformity, and fairness in sentencing and the relative disfavor in which its drafters held existing statutory maximum penalties, the interpretation of section 5037(c)(1)(B) which the government urges seems clearly wrong. If we were to adopt this construction, *any* juvenile adjudicated a delinquent for committing involuntary manslaughter could be sentenced to three years imprisonment with no possibility of parole. An adult convicted of the same offense, however, could receive the same sentence *only* if he had an extensive criminal record or if his commission of the offense included aggravating factors sufficient to increase his base offense level by five levels under the sentencing guidelines. *See* U.S.S.G. ch.5, pt. A—Sentencing Table. Such disparate results seem particularly unreasonable in light of the guidelines' admonition that age is not ordinarily a factor relevant to decisions among sentencing options. *See id.* § 5H1.1 (policy statement).

Rules of statutory construction also counsel against adopting an interpretation of section 5037(c)(1)(B) that would subject juveniles to the maximum statutory penalty for the offense committed. Criminal

statutes must be strictly construed. *See Dowling v. United States*, 473 U.S. 207, 213 (1985).[2] The rule of lenity states that a court cannot interpret a federal criminal statute "so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). This principle of construction applies to sentencing provisions as well as to substantive criminal statutes. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *Rowe v. Lockhart*, 736 F.2d 457, 461 (8th Cir. 1984). The rule of lenity favors the statutory construction that yields the shorter sentence.

Section 5037(c)(1)(B)'s language and legislative history, the policies underlying federal sentencing reform, the consequences of the possible interpretations, and the rule of lenity require us to adopt the construction of the statute that subjects juveniles sentenced under it to the lesser penalty; in this case, the construction urged by R.L.C. We hold that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and con-

[2] Although an adjudication of juvenile delinquency under 18 U.S.C. § 5031 is a determination of status rather than a criminal conviction, *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.), *cert. denied*, 449 U.S. 987 (1980), the Federal Juvenile Delinquency Act entitles a juvenile to all rights that would be accorded an adult in a criminal prosecution except that right to a grand jury indictment. S. Rep. No. 93-1011, 93d Cong., 2d Sess. 38, *reprinted in* 1974 U.S. Code Cong. & Admin. News 5321. Because statutes imposing penalties on juvenile delinquents involve deprivations of liberty similar to those attendant on criminal conviction, they should be construed no less strictly than statutes imposing criminal sanctions on adults.

victed as an adult" prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines.[3] This holding requires a particularized, subjective determination in each case of the upper limit of the appropriate guideline range. In cases involving aggravating circumstances not contemplated by the guidelines, a court sentencing a juvenile delinquent could make a finding that the prescribed range did

---

[3] Our holding conflicts with that of the Ninth Circuit in *United States v. Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), *cert. denied*, 110 S. Ct. 369 (1989). We find that decision's reasoning unpersuasive for the reasons discussed above, and believe that its holding will lead to inequitable results inconsistent with the goals of federal sentencing reform.

The Ninth Circuit found persuasive language in 18 U.S.C. § 3559, which deals with the classification of federal offenses under the sentencing guidelines. Subsection (a) provides that offenses which do not contain a letter classification can be classified based upon the length of imprisonment authorized by the statute defining the offense. The *Marco* court points to section 3559(b), which is entitled "Effect of Classification," and states that "[a]n offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the statute describing the offense." The *Marco* court reasoned that this language shows that "Congress has defined the 'maximum term of imprisonment' to be that term prescribed by the statute defining the offense." *Id.* at 1124. The sentence in section 3559(b), however, refers *only* to language in section 3559(a), and seeks to establish what no one contests: that no matter what letter classification an offense is given, the maximum term of imprisonment a judge can impose is the term listed in the statute defining the offense. Section 3559(b) was not meant to function as an overaching definition of "maximum term of imprisonment" for the entire federal criminal code.

not adequately reflect the severity of the offense, and could deviate from that range accordingly.

CONCLUSION

We vacate the sentence imposed by the district court and remand this case for resentencing consistent with this opinion.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Crim. 4-89-175

UNITED STATES OF AMERICA, PLAINTIFF

v.

R. L. C., a JUVENILE, DEFENDANT

MEMORANDUM AND ORDER

Jerome G. Arnold, United States Attorney, and Jeanne J. Graham, Assistant U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN 55401, for plaintiff.

Katherian D. Roe, 174 U.S. Courthouse, Minneapolis, MN 55401, for defendant.

This matter is before the Court on a certification filed by the government pursuant to 18 U.S.C. § 5032 charging defendant, a juvenile within the meaning of 18 U.S.C. § 5031, and an Indian, with involuntary manslaughter pursuant to 18 U.S.C. §§ 1112 and 1153, such violation constituting "juvenile delinquency" pursuant to 18 U.S.C. § 5031.

Based on all the evidence presented at trial, and on the factual stipulations of counsel, the Court finds that the government has proven beyond a reasonable doubt that:

1. defendant was the driver of the vehicle which in the early morning hours of November 5, 1989 collided with a vehicle in which LeTesha Lynn Mountain was a passenger;

2. LeTesha Lynn Mountain died as a result of injuries sustained as a result of that collision;

3. defendant was driving the motor vehicle involved in the collision without the authorization of the vehicle's owner;

4. at the time of the collision defendant was intoxicated;

5. at the time of the collision defendant was operating the motor vehicle in a reckless and unsafe manner in excess of the applicable speed limit;

6. such conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a);

7. at the time of the incident, defendant was an Indian, residing on and within the Red Lake Indian Reservation within Indian country in the State and District of Minnesota;

8. at the time of the incident defendant was a juvenile within the meaning of 18 U.S.C. § 5031.

Pursuant to the foregoing findings, IT IS HEREBY ADJUDGED that defendant is delinquent within the meaning of 18 U.S.C. § 5031. Defendant shall remain in the custody of his uncle, Donald Cook, until the Court holds a dispositional hearing pursuant to 18 U.S.C. § 5037.

/s/ Harry H. MacLaughlin
JUDGE HARRY H. MACLAUGHLIN
United States District Court

DATED: December 26, 1989

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 90-5048MN

UNITED STATES, APPELLEE

vs.

R. L. C., JUVENILE MALE, APPELLANT

ORDER DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

Appellee's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc. Judges Bowman, Wollman, Magill and Beam would have granted the petition.

Petition for rehearing by the panel is also denied.

December 18, 1990

ORDER ENTERED AT THE DIRECTION OF THE COURT

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20430

AO 245 (Rev. 7/90) Judgment in a Criminal Case

APPENDIX D

United States District Court

District of Minnesota

UNITED STATES OF AMERICA
V.
Robert Lee Cook
(Name of Defendant)

REVISED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed Prior to November 1, 1987)

Case Number: Cr. 4-89-175

Katherian Roe
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____
☒ was found guilty on count(s) 1 of 1 count information after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 1112(b) & 1153	Involuntary manslaughter on an Indian reservation.	11/5/89	1

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States

IT IS THE JUDGMENT OF THIS COURT THAT:
The defendant is hereby committed to the custody of the Bureau of Prisons of the United States for imprisonment for a term of 18 months.

The Court finds that Debra Garrigan is a victim of the defendant's offense within the meaning of the Victim and Witness Protection Act. The Court finds that the financial resources of the defendant are inadequate to justify any order of restitution.

A true copy in 1 sheets of
the original record in my custody.
Certified 1-22 19 91
Francis E. Dosal, Clerk
By: M. Chetick
Deputy Clerk

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

AO 245 (Reverse)

CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant:

1) shall not commit another federal, state or local crime.
2) shall not leave the judicial district without the permission of the court or probation officer;
3) shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5) shall support his or her dependents and meet other family responsibilities;
6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
15) shall pay any fine or obligation imposed by this judgment.
16) shall not possess a firearm or destructive device.

☐ IT IS FURTHER ORDERED that the defendant shall pay a special assessment of $ _____ , for count(s) _____ , which shall be due ☐ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

☒ The court orders commitment to the custody of the Attorney General and recommends:
The Court recommends the Missouri River Adolescence Center in Chamberlain, South Dakota as the place for service of the balance of the sentence.

Defendant's Soc. Sec. No.: 474-84-9551
Defendant's Date of Birth: 8/3/73
Defendant's Mailing Address:

In Custody

Defendant's Residence Address:

In Custody

January 25, 1991
Date of Imposition of Sentence

Signature of Judicial Officer

Judge Harry H. MacLaughlin
Name & Title of Judicial Officer

January 25, 1991
Date

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____ with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

Supreme Court, U.S.
FILED
JUN 5 1991
OFFICE OF THE CLERK

(3)

No. 90-1577

In the Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

In the Supreme Court of the United States

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

---

1. Respondent first contends that this case is moot. Br. in Opp. 8-12.

The district court originally sentenced respondent to three years' confinement. The court of appeals vacated that sentence, remanded the case for resentencing, and issued its mandate. Pet. 4. On remand, the district court resentenced respondent to 18 months' confinement. Pet. 5 n.1; Br. in Opp. App. D. Respondent states that he completed that sentence on March 20, 1991, and that this case is therefore moot. Br. in Opp. 9.[1] That contention lacks merit.

[1] The district court did not stay the execution of respondent's original sentence pending appeal. 1/24/90 Tr. 11-16.

Respondent has not completed the three-year sentence originally imposed by the district court. Instead, he has completed only the 18-month period of confinement that the district court imposed by compulsion of the remand order at issue in this case. For that reason this case is not moot. If the court of appeals' judgment is reversed, the effect will be to reinstate the district court's judgment, and respondent will have to complete the remaining portion of the original three-year period of confinement. The parties therefore have "a legally cognizable interest in the outcome" of this case. *Murphy* v. *Hunt*, 455 U.S. 478, 481 (1982).[2]

Respondent maintains that the 18-month sentence imposed on remand is now the relevant sentence because the government did not obtain a stay of the court of appeals' mandate. Br. in Opp. 11-12. That claim is contrary to the firmly settled principle that the issuance of a court of appeals' mandate has no effect on the power of this Court to review the court of appeals' judgment. See, *e.g.*, *United States* v. *Villamonte-Marquez*, 462 U.S. 579, 581-582 n.2 (1983); *Mancusi* v. *Stubbs*, 408 U.S. 204, 206-207 (1972); *Bakery Sales Drivers Local Union No. 33* v. *Wagshal*, 333 U.S. 437, 442 (1948); *Aetna Casualty Co.* v. *Flowers*, 330 U.S. 464, 467 (1947); *Carr* v. *Zaja*, 283 U.S. 52, 53 (1931); *Dakota County* v. *Glidden*, 113 U.S. 222, 224 (1885). In *Carr* v. *Zaja*, *supra*, the respondent advanced the same argument on which respondent here relies: "the mandate of

[2] Respondent errs in relying on *St. Pierre* v. *United States*, 319 U.S. 41 (1943). Br. in Opp. 9-10. The defendant in that case completed his entire contempt sentence before this Court decided the case. Respondent, by contrast, has 18 months of his original sentence yet to serve.

the Circuit Court of Appeals was not stayed, but was issued to the District Court * * * [and] therefore the case is finished." This Court rejected that contention, holding that issuance of the mandate "does not defeat [its] jurisdiction." 283 U.S. at 53. The reason for that rule is that a reversal of the judgment of a lower court by this Court serves to vacate the lower court's judgment and to nullify what was done under the mandate embodying the erroneous judgment. *United States* v. *Villamonte-Marquez*, 462 U.S. at 581-582 n.2. Accordingly, should this Court reverse the Eighth Circuit's judgment, the three-year term of confinement imposed by the district court would be reinstated, and respondent would have to complete the remaining portion of that sentence.

2. Respondent concedes that the Eighth Circuit's decision in this case conflicts with the Ninth Circuit's decision in *United States* v. *Marco L.*, 868 F.2d 1121, cert. denied, 493 U.S. 956 (1989). He contends, however, that the lower courts should be given a further opportunity to consider the question presented so that "a satisfactory majority view among the circuits" can be adopted. Br. in Opp. 13. Such further consideration, however, cannot eliminate the present conflict. And as we explained in our petition (at 6), the sentencing issue in this case arises with sufficient regularity that it cannot be dismissed as a narrow conflict affecting very few cases. The issue also is not one that stands to benefit from further percolation in the lower courts. Instead, it is a pure question of statutory construction on which there are only two possible answers—the one given by the Eighth Circuit and the one given by the Ninth. Further developments in the case law are not likely to add anything that would be useful to this Court's analysis of the question.

The question presented by this case is not one that the Sentencing Commission can resolve by revising the Sentencing Guidelines. See *Braxton* v. *United States*, No. 90-5358 (May 28, 1991), slip op. 4. The court of appeals ruled that the "maximum term of imprisonment" authorized by 18 U.S.C. 5037(c)(1) is the top of the presumptive sentencing range defined by the Sentencing Guidelines, not the maximum term of imprisonment authorized by the law describing the offense of conviction. Pet. App. 6a-7a. Congress did not authorize the Sentencing Commission to promulgate Sentencing Guidelines for juvenile delinquency adjudications, however, as we explained in our petition (at 11-12). The Sentencing Commission therefore lacks the power to adopt Guidelines that would eliminate the conflict among the circuits.

3. Respondent maintains that the Eighth Circuit held only that a district court must look to the Sentencing Guidelines as a "guide" when sentencing juvenile offenders. Br. in Opp. 8. The Eighth Circuit's opinion, however, is not so limited, as we have explained in our petition. In fact, at the sentencing hearing held on remand respondent's counsel took the position that the Eighth Circuit's decision establishes the top of the sentencing range in the applicable Sentencing Guideline as the ceiling above which a juvenile may not be sentenced. 1/25/91 Tr. 4-5.[a] We

[a] Respondent's counsel stated at the remand sentencing hearing, 1/25/91 Tr. 4-5:

> MS. ROE: I won't speak to the issue of acceptance of responsibility or a downward departure. But what I would like to speak to, Your Honor, is I think that the Court of Appeals made it clear in their decision that they are not saying that the guidelines apply and that the guideline ranges apply, but only that it's the top of the range that the juvenile can't be sentenced above.
>
> THE COURT: Right.
>
> MS. ROE: So my reading of it, of the Court of Appeals decision, and I just wanted to make sure that—
>
> THE COURT: I agree with that.
>
> MS. ROE: Okay.

agree with the position taken by respondent's counsel in the district court, not the position counsel has taken in this Court. The decision below does more than simply advise district courts to consider the Guidelines for guidance in juvenile delinquency proceedings.

For the foregoing reasons and those given in the petition, it is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

KENNETH W. STARR
Solicitor General

JUNE 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 292061 20583

FILED
JUL 22 1991
OFFICE OF THE CLERK

No. 90-1577

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

KENNETH W. STARR
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QUESTION PRESENTED

Whether, in sentencing respondent as a juvenile delinquent pursuant to 18 U.S.C. 5037(c)(1)(B), which provides that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," the district court was required to apply the Sentencing Guidelines to determine "the maximum term of imprisonment."

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FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 915 F.2d 320. The opinion of the district court (Pet. App. 15a-16a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 1990. A petition for rehearing was denied on December 18, 1990. Pet. App. 17a. On March 12, 1991, Justice Blackmun extended the time

within which to file a petition for a writ of certiorari to and including April 17, 1991. The petition was filed on April 11, 1991, and was granted on June 24, 1991. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. The Juvenile Delinquency Act, 18 U.S.C. 5037, provides, in part, as follows:

> (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. * * *
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> * * * * *
>
> (c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—
>
> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—
>
> (A) the date when the juvenile becomes twenty-one years old; or
>
> (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or

> (2) in the case of a juvenile who is between eighteen and twenty-one years old—
>
> (A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or
>
> (B) in any other case beyond the lesser of—
>
> (i) three years; or
>
> (ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.
>
> Section 3624 is applicable to an order placing a juvenile under detention.

2. Section 3559 of Title 18 provides as follows:

> (a) Classification.—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—
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> (1) life imprisonment, or if the maximum penalty is death, as a Class A felony;
>
> (2) twenty-five years or more, as a Class B felony;
>
> (3) less than twenty-five years but ten or more years, as a Class C felony;
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> (4) less than ten years but five or more years, as a Class D felony;
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> (5) less than five years but more than one year, as a Class E felony;
>
> (6) one year or less but more than six months, as a Class A misdemeanor;
>
> (7) six months or less but more than thirty days, as a Class B misdemeanor;
>
> (8) thirty days or less but more than five days, as a Class C misdemeanor;

(9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification.—An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

3. Section 3581 of Title 18 provides as follows:

(a) In general.—A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) Authorized terms.—The authorized terms of imprisonment are—

(1) for a Class A felony, the duration of the defendant's life or any period of time;

(2) for a Class B felony, not more than twenty-five years;

(3) for a Class C felony, not more than twelve years;

(4) for a Class D felony, not more than six years;

(5) for a Class E felony, not more than three years;

(6) for a Class A misdemeanor, not more than one year;

(7) for a Class B misdemeanor, not more than six months;

(8) for a Class C misdemeanor, not more than thirty days; and

(9) for an infraction, not more than five days.

STATEMENT

1. On November 5, 1989, two-year-old La Tesha Mountain died on the Red Lake Indian Reservation as the result of injuries suffered when the car in which she was riding was struck from the rear by a stolen car driven by respondent. Respondent, a 16-year-old, had been drinking at a party on the reservation and thereafter stole the car that was involved in the accident. Pet. App. 2a, 15a-16a.

2. Following a bench trial, the district court found that respondent stole the car, that he drove the car recklessly while he was intoxicated, that he caused La Tesha's death, and that his conduct constituted involuntary manslaughter, in violation of 18 U.S.C. 1112(a). The court found respondent to be a juvenile delinquent under 18 U.S.C. 5031. Pet. App. 15a-16a.

At sentencing respondent sought leniency. Because the Sentencing Guidelines do not apply to juvenile delinquency proceedings, respondent neither argued that the Sentencing Guidelines applied to his offense, nor urged the court to limit his term of commitment to the presumptive sentencing range set by the Sentencing Guidelines. 1/24/90 Tr. 5-7. The government urged the court to impose the maximum statutory penalty of three years' confinement. *Id.* at 7-8. See 18 U.S.C. 1112(a). After weighing the sentencing options and the circumstances of the crime, as well as the juvenile facilities available for detention, the court committed respondent for a term of three years and recommended that he be sent to the Missouri River Adolescent Center in Chamberlain, South Dakota. 1/24/90 Tr. 8-11.

3. Respondent appealed. The court of appeals upheld the finding of delinquency, but vacated the sen-

tence and remanded the case for resentencing. Pet. App. 1a-14a. Although the 36-month sentence that respondent received was within the period of imprisonment authorized by statute, the court held that the sentence exceeded the maximum period of confinement that can be imposed on a juvenile delinquent under 18 U.S.C. 5037(c)(1)(B). That statute provides in pertinent part that the sentence imposed on a juvenile may not extend beyond "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." Pet. App. 3a-14a.

The court acknowledged that the Sentencing Guidelines do not apply to individuals sentenced as juvenile delinquents under 18 U.S.C. 5037, Pet. App. 6a, but nevertheless concluded that "[u]sing the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences." *Ibid.* The court also determined that the legislative history of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976, supported that conclusion because it showed that "Congress did not intend the real time served by juvenile offenders to exceed the real time that would be served by adults convicted of similar crimes." Pet. App. 7a-8a. Finally, the court invoked the rule of lenity, stating that the rule "favors the statutory construction that yields the shorter sentence." *Id.* at 12a. As the court summarized: "We hold that the phrase 'maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult' prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines." *Id.* at 12a-13a.

SUMMARY OF ARGUMENT

A. By its terms, the governing statute resolves the issue in this case. The Juvenile Delinquency Act limits the sentence that can be imposed on a juvenile to "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C. 5037(c)(1)(B), (c)(2)(B)(ii). The pivotal phrase in Section 5037 —"maximum term of imprisonment"—refers to the statutory maximum term, not the maximum sentence that could have been imposed under the Sentencing Guidelines. Congress, not the Sentencing Commission, has power to "authorize" imprisonment as punishment for a crime. The Sentencing Guidelines do not "authorize" any punishment to be imposed for an offense, let alone the "maximum term of imprisonment." Instead, the Guidelines define ranges of presumptive sentences for categories of offenses and offenders that are within statutory limits.

The version of Section 5037 that was in effect prior to the Comprehensive Crime Control Act of 1984 provided that a juvenile offender could be sentenced to "the maximum term which could have been imposed on an adult convicted of the same offense." 18 U.S.C. 5037(b) (1982). That statute clearly referred to the maximum statutory penalty to which an adult offender would be exposed, and the 1984 amendment to the statute did not change the statute in that regard; the pre-1984 version of the statute and the current version both refer to the maximum term of confinement that a court may im-

pose, not to the (usually lesser) sentence that would have been handed down in fact. In addition, in the portion of the 1984 Act that adopted a new offense classification system, Congress defined "the maximum term of imprisonment" as "the term authorized by the law describing the offense." 18 U.S.C. 3559(b). Since Congress is presumed to give terms the same meaning throughout a statute, the phrase "maximum term of imprisonment" should have the same meaning in Section 5037(c)(1)(B) that it has in Section 3559(b).

The court of appeals concluded that a 1986 amendment to the Comprehensive Crime Control Act of 1984 revealed that Congress had rejected establishing statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive. The court misread the 1986 amendment. The purpose of that amendment was to ensure that juveniles would not be subject to a more severe statutory punishment than adults because of the unintended effect of unrelated sections of the 1984 Act. The 1986 amendment was not designed to provide a lower ceiling for juvenile offenders than for adult criminals.

B. The Eighth Circuit was concerned that, because the Sentencing Guidelines do not apply to juvenile adjudications, construing the "maximum punishment" clause to refer to the maximum statutory punishment would mean that juveniles could receive longer sentences than adult offenders. That concern is misplaced. The Sentencing Guidelines limit courts' sentencing discretion for adult offenders, but they do so in both directions—upward and downward—and

they do not affect the maximum punishment that can be imposed under the statute of conviction. Thus, a juvenile committed under Section 5037 is not necessarily in a worse position than an adult sentenced under the Sentencing Guidelines. In any event, because juvenile offenders are detained for different reasons, in different settings, and under a different criminal justice system than adult offenders, there is no inherent inequity in providing different periods of detention for juvenile offenders than for adult criminals.

C. The rule of lenity does not support the court of appeals' judgment in this case. That rule comes into play only if the statute is insolubly ambiguous. Section 5037 is not ambiguous at all. The reference to the maximum term of imprisonment that can be imposed on an adult clearly refers to the statutory maximum penalty, so there is no need to consult the rule of lenity as a tool of construction.

ARGUMENT

THE "MAXIMUM TERM OF IMPRISONMENT" TO WHICH A JUVENILE IS SUBJECT UNDER THE JUVENILE DELINQUENCY ACT IS THE MAXIMUM TERM OF CONFINEMENT AUTHORIZED BY THE STATUTE DEFINING THE OFFENSE

A. The "Maximum Term Of Imprisonment" In 18 U.S.C. 5037(c)(1)(B) Refers To The Maximum Term Of Imprisonment Authorized By Statute

Section 5037(c) sets the limit on the court's authority to sentence juvenile offenders to official detention. For juveniles under the age of 18, the statute provides that the juvenile may not be detained beyond his twenty-first birthday, 18 U.S.C. 5037 (c)(1)(A), and in any event may not be given a sentence of detention that is greater than "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," 18 U.S.C. 5037(c)(1)(B). Persons between the ages of 18 and 21 prosecuted for offenses committed while they were juveniles may be sentenced to a term of five years' official detention if convicted of a Class A, B, or C felony. 18 U.S.C. 5037 (C)(2)(A) (incorporating 18 U.S.C. 3559(a)). When convicted of any other offense, such persons may be sentenced to a term of official detention of up to three years or equal to "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," whichever is less. 18 U.S.C. 5037(c)(2)(B).

The court of appeals acknowledged that the Sentencing Guidelines do not apply to juvenile commitment decisions. See Pet. App. 6a.[1] Nonetheless, the

[1] Congress made that point clear in the Comprehensive Crime Control Act of 1984. See *United States* v. *Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), cert. denied, 493 U.S. 956 (1989). Section 5037(a) of the Juvenile Delinquency Act, which was amended as part of the 1984 statute, provides that a district court in a juvenile proceeding should "consider any pertinent policy statements" promulgated by the Sentencing Commission, but it does not make the Sentencing Guidelines directly applicable to juvenile proceedings. See S. Rep. No. 225, 98th Cong., 2d Sess. 163-167 (1983) (discussing the difference between Sentencing Guidelines and Policy Statements issued by the Sentencing Commission). Moreover, 28 U.S.C. 995(a)(19), also enacted as part of the 1984 statute, directs the Sentencing Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents," which makes it clear that Congress did not regard the Guidelines in their current form as applicable to juvenile proceedings. Finally, the Sentencing Commission recently made this point expressly in a proposed amendment to Sentencing Guidelines § 5H1.1 (Policy Statement). See 56 Fed. Reg. 22,779 (1991) ("The Guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037."). The Sentencing Commission has only recently begun to consider whether it would be feasible to create Sentencing Guidelines for juvenile commitment proceedings.

court's ruling in effect tied juvenile sentencing to the Sentencing Guidelines, since the court held that the sentence to which a similarly situated adult offender would be subject under the Sentencing Guidelines is the "maximum term of imprisonment" that may be imposed on a juvenile offender under Section 5037 (c)(1)(B). That interpretation of Section 5037 could be correct only if the Sentencing Guidelines "authorized" the "maximum term of imprisonment" that may be imposed on an adult criminal. In fact, however, the Guidelines do not "authorize" any punishment to be imposed for an offense, let alone the "maximum term of imprisonment."

1. *Only statutes that affix a penalty to prohibited conduct can "authorize" a term of imprisonment as the punishment for a crime*

Historically, the federal government used a system of indeterminate sentencing as the principal method for punishing offenders. Statutes establishing the penalties typically gave the trial courts broad discretion to decide whether an offender should be imprisoned and for how long, and parole laws authorized correctional officials to release a prisoner before the expiration of the sentence imposed by the judge. *Mistretta* v. *United States*, 488 U.S. 361, 363-365 (1989). "Thus, under the indeterminate-sentence system, Congress defined the maximum, the judge imposed a sentence within the statutory range (which he could usually replace with probation), and the Executive Branch's parole official eventually determined the actual duration of imprisonment." *Id.* at 365.

The role played by courts and correctional officials, however, was and still is subservient to that of Congress. An elementary principle of federal criminal law is that a person can be imprisoned as a punishment for a crime only if Congress has authorized that penalty for his offense. As this Court explained in *Ex parte United States*, 242 U.S. 27, 42 (1916), "the authority to define and fix the punishment for crime is legislative." See also *United States* v. *Evans*, 333 U.S. 483 (1948) (holding that no term of imprisonment can be imposed for conduct prohibited by a federal law that did not also authorize imprisonment to be imposed as the penalty for such conduct); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) ("the power of punishment is vested in the legislative, not the judicial department"); *Whalen* v. *United States*, 445 U.S. 684, 689 (1980) (stating the "basic principle that within our federal constitutional framework the legislative power, including the power to define criminal offenses and to prescribe the punishments to be imposed upon those found guilty of them, resides wholly with the Congress"); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812).

Over time, Congress became disenchanted with the rehabilitative theory that underlay the indeterminate sentencing system, and it became concerned with the sentencing disparities that that system produced. As a result, Congress adopted a "guidelines" sentencing system. Congress chartered the United States Sentencing Commission and directed it to adopt a comprehensive system of guidelines to channel the courts' sentencing discretion. *Burns* v. *United States*, 111 S. Ct. 2182, 2184 (1991); *Mistretta*, 488 U.S. at 367-370.

At the same time, Congress did not give the Sentencing Commission the "authority" to define punishments or to modify an offender's "maximum term of imprisonment" in any way; Congress reserved that power for itself. The Commission's task was simply to adopt Guidelines defining ranges of presumptive sentences for categories of offenses and offenders; those Guidelines were required to be within the limits set by existing laws defining the punishment for particular offenses. 28 U.S.C. 991, 994(a), and (b). As this Court recognized in *Mistretta*, 488 U.S. at 374-375, "Congress instructed the Commission that these sentencing ranges must be consistent with pertinent provisions of Title 18 of the United States Code and could not include sentences in excess of the statutory maxima." The Sentencing Guidelines, accordingly,

neither convey nor reflect any sentencing "authority"; instead, they are limitations on the sentencing authority courts possess by virtue of the law authorizing the imprisonment of a convicted offender.

In holding that "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult," 18 U.S.C. 5037 (c)(1)(B), is the sentence to which an adult would be subject under the Sentencing Guidelines, the Eighth Circuit never considered the meaning of the term "authorized" in Section 5037. In fact, the court of appeals did not mention that term at all. Instead, it concluded that "[t]he phrase 'if *the juvenile* had been tried and convicted as an adult' suggests that the sentencing court should focus on the actual maximum sentence the particular juvenile in question would have been subject to but for his age, considering those individualized, subjective factors that would be relevant to sentencing the same individual as an adult." Pet. App. 5a. That conclusion, however, is clearly mistaken.

Section 5037(c)(1)(B) does not refer to the sentence that probably would have been imposed if the juvenile had been tried and convicted as an adult. Instead, the statute uses the clause "the maximum term of imprisonment that would be *authorized* if the juvenile had been tried and convicted as an adult" (emphasis added). That choice of terms is significant because, as explained above, only a statute, not the Sentencing Guidelines, can authorize a term of imprisonment as the punishment for crime. Because the "authority" to imprison an offender stems from the statute defining the offense and authorizing imprisonment as a penalty for a crime, the "maximum punishment" clause in 18 U.S.C. 5037

(c)(1)(B) refers to the maximum term of imprisonment authorized in the law defining the offense, not the sentence that would have been imposed on an adult under the Sentencing Guidelines.

2. The Comprehensive Crime Control Act of 1984 uses the phrase "maximum term of imprisonment" to refer to the maximum term of confinement authorized by statute

a. Before 1984, the Juvenile Delinquency Act provided that a district court could sentence a juvenile under the age of 19 to commitment for a period not to extend beyond his twenty-first birthday or "the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner." 18 U.S.C. 5037(b) (1982).[2] Under that statute, there was no question that the "maximum term which could have been imposed on an adult convicted of the same offense" referred to the maximum penalty set forth in the applicable criminal statute. The Sentencing Guidelines were not in effect prior to November 1, 1987, so the only restrictions on a court's sentencing discretion were the statutory maximum and minimum sentences.

In amending the Juvenile Delinquency Act in 1984, Congress made a number of changes in the statute, but it kept the sentencing provisions largely the same. In place of the reference to the "maximum term which could have been imposed on an adult convicted of the same offense," the Congress referred to "the maximum term of imprisonment that would

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[2] A juvenile over the age of 19 could be committed for a period not to exceed "the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense." 18 U.S.C. 5037(b) (1982).

be authorized by [18 U.S.C.] 3581(b) if the juvenile had been tried and convicted as an adult." 18 U.S.C. 5037(c)(1)(B), (c)(2)(B)(ii) (Supp. II 1984).

Nothing in the text or legislative history of the 1984 statute suggests that the use of the phrase "the maximum term of imprisonment that would be authorized [by statute]" in place of the phrase "the maximum term of imprisonment which could have been imposed" was meant to change the maximum possible penalty for juvenile offenders by limiting it to the sentence to which an adult would be subject under the Sentencing Guidelines. In fact, the reference to 18 U.S.C. 3581(b), which sets forth the authorized statutory maximum terms of imprisonment for various offenses, makes it clear beyond dispute that the reference to "the maximum term of imprisonment that would be authorized" was meant to refer to the statutory maximums, not to the lower range of penalties established by the Sentencing Commission.

b. There is another clear textual indication in the 1984 Act that the reference to the maximum authorized term in Section 5037 of the 1984 Act was meant to refer to the maximum term authorized by the applicable criminal statute, as had been the case under pre-1984 law. A new feature adopted by the 1984 Act was a classification system that would be used in future legislation to rank federal offenses according to their relative seriousness. Felonies would be categorized from Class A to E, misdemeanors would be categorized from Class A to C, and the remaining crimes would be listed as infractions. 18 U.S.C. 3559(a)(1)-(9). The grading system was designed to enable Congress to define the maximum term of imprisonment, the maximum fine, the availability and

maximum term of probation, and the maximum term of supervised release simply by specifying the grade of a particular offense. S. Rep. No. 225, 98th Cong., 2d Sess. 51, 86-88 (1983). See 18 U.S.C. 3561(a) (probation), 3571(b) (fines), 3581(b) (imprisonment), 3583(b) (supervised release).

To avoid any misunderstanding about the effect of the classification system on existing laws, Congress provided that for offenses not specifically classified by a letter grade in the section defining the offense, "the maximum term of imprisonment is the term authorized by the law describing the offense," not by the new grading scheme. 18 U.S.C. 3559(b). Congress therefore was quite explicit in providing that the "maximum term of imprisonment" authorized for an adult offender is the maximum sentence set forth in the statutory penalty provision, not the top of the presumptive sentencing range established by the Sentencing Guidelines. See S. Rep. No. 225, *supra*, at 51, 114.[3]

The definition given to the phrase "maximum term of imprisonment" in Section 3559(b) is significant because Congress in the Comprehensive Crime Control Act of 1984 used that phrase in both Section 3559(b) and Section 5037. See Pub. L. No. 98-473, §§ 212, 214, 98 Stat. 1991-1992, 2013-2014. Because Congress is presumed to give a particular term the same meaning throughout a statute, see, *e.g.*, *Sullivan* v. *Stroop*, 110 S. Ct. 2499, 2504 (1990), the reference to "the maximum term of imprisonment" should carry the same meaning in Section 5037

[3] In other portions of Title 18 as well, the phrase "maximum term of imprisonment" is invariably used to mean the maximum penalty authorized by statute. See, *e.g.*, 18 U.S.C. 3, 373, 3142(e), 3156(a)(3).

(c)(1)(B) that it does in Section 3559(b). As the Ninth Circuit concluded in *United States* v. *Marco L.*, 868 F.2d 1121, 1124, cert. denied, 493 U.S. 956 (1989), the use of the same language in Sections 3559 and 5037 is further evidence that the "maximum term of imprisonment" that may be imposed under Section 5037(c)(1)(B) on a juvenile delinquent is the maximum period of confinement set forth in the statute describing the offense.

c. In 1986, Congress amended Section 5037(c) by deleting the phrase "by section 3581(b)" immediately following the phrase "maximum term of imprisonment that would be authorized." Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 21(a)(2), 100 Stat. 3596. Referring to the 1986 amendment, the court of appeals in this case concluded that Congress "reconsidered and rejected establishing * * * statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive." Pet. App. 7a n.1. In drawing that conclusion, the court misread the 1986 amendment.

The principal purpose of the 1986 statute, as its title indicates, was to correct technical errors in the Criminal Code generated by the many changes made by the Comprehensive Crime Control Act of 1984. The amendment to Section 5037 was meant to ensure that juveniles would not be exposed to greater maximum statutory penalties than adults for the same offense, not to provide a lower statutory ceiling for juvenile offenders than for adult criminals. See S. Rep. No. 278, 99th Cong., 2d Sess. 3 (1986) ("Section 17 [of the bill that became the 1986 Act] makes clear that juvenile sentences are to be of equal length as those for adult offenders committing the same

crime, * * *."); 131 Cong. Rec. 14,177 (1985) (section-by-section analysis of S. 1236) ("Because of the effect of 18 U.S.C. § 3559(b)(2) [(Supp. II 1984)], deleting the reference to section 3581(b) will tie the maximum sentence for juveniles to the maximum sentence for adults, rather than making juvenile sentences more severe than adult sentences.").

Congress's apparent concern was that the reference to Section 3581(b) might lead a court to conclude that the penalties for a particular ungraded offense would be those listed in Section 3581(b), rather than those listed in the statute describing the offense. The problem could arise as follows: suppose a juvenile was convicted of committing an offense that carried a maximum penalty of five years' imprisonment but was not specifically assigned a letter grade in the statute defining the offense. Under 18 U.S.C. 3559(a)(1)(D) (Supp. II 1984), the offense would be characterized as a Class D felony. Section 3581(b) provides that, in the case of all Class D felonies, the maximum penalty is six years' imprisonment. That provision would appear to expose the defendant to a six-year sentence rather than just a five-year sentence as provided in the statute defining the offense. Section 3559(b), however, states that in the case of a felony that is not specifically classified by a letter grade in the section defining the offense, the maximum penalty is the one authorized by the statute describing the offense. Section 3559(b) therefore has the effect of overriding Section 3581(b) with respect to ungraded offenses, so that a felony carrying a five-year maximum that is not expressly given a letter grade in the section defining the offense can give rise to a maximum of only five years' imprisonment.

The problem with the 1984 version of Section 5037, which contained an express reference to Section 3581(b), is that the reference to Section 3581(b) could be read to displace Section 3559(b) and make the penalties in Section 3581(b) applicable even for crimes not expressly graded in the section describing the offense. That would produce, in some cases at least, a greater maximum statutory penalty for juveniles than for adults who commit the same offense. For that reason, Congress had to remove the reference to Section 3581(b) in order to ensure that the maximum penalty to which a juvenile would be exposed would be the same as the statutory maximum penalty that would apply to an adult who committed the same offense.[4] The 1986 amendment to Section

[4] A footnote in the House committee report states in part that the 1986 amendment to Section 5037 "delete[s] references to 18 U.S.C. 3581(b) so that juvenile offenders will not be subjected to the same maximum penalties assessed for adult offenders." H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 n.3 (1986). That statement is not accompanied by any explanation of how the amendment would have the described effect. Moreover, that single statement appears to be contradicted by other portions of the legislative history, including other portions of the House report. The Senate materials quoted in the text make clear that the purpose of the 1986 amendment was not to make the maximum penalties for juvenile and adult offenders different, but to ensure that they would continue to be the same. There are two features of the House report that support that interpretation. First, the House report indicates that the amendment to Section 5037 merely "delet[es] an incorrect cross-reference," *id.* at 21, which suggests that no substantive change was intended. Second, the footnote addressing Section 5037 refers to a "parallel amendment" made by a different section of the same bill, *id.* at 21 n.3, where the bill repealed a reference to the Young Adult Offenders Act; the effect of that "parallel amendment" was to ensure that young offenders would be subject to the same maximum sentences as adult offenders, not longer ones. See *id.* at 17. The reference to the section repealing the Young Offenders Act therefore suggests that the change in Section 5037 was intended to have the parallel effect of ensuring that the maximum statutory penalties for juveniles would not be longer than for adults.

5037 therefore does not support the court of appeals' conclusion that Congress omitted the reference to Section 3581(b) in order to tie the maximum juvenile penalties to the Sentencing Guidelines rather than to the maximum penalties set forth in the applicable criminal statutes.

B. The Eighth Circuit's Concern With Avoiding Disparate Terms Of Imprisonment For Juvenile And Adult Offenders Does Not Support The Court's Interpretation Of Section 5037(c)(1)(B)

The Eighth Circuit reasoned that, because a principal purpose of the Comprehensive Crime Control Act of 1984 was to eliminate unwarranted sentencing disparities, Section 5037(c)(1)(B) should be read to limit the maximum sentence that a juvenile can receive to the maximum term of confinement in the Sentencing Guidelines. Otherwise, the court reasoned, juveniles could be sentenced more severely than adults, which would undercut the goals of the Act. Pet. App. 7a-11a. Respondent endorses that analysis. Br. in Opp. 15-19.

The premise of the Eighth Circuit's analysis is mistaken. Interpreting the "maximum punishment" clause as referring to the statutory maximum punishment would not necessarily result in harsher penalties for juveniles. Juveniles and adults who commit involuntary manslaughter can both be sentenced to three years' confinement. The difference between the two is that adult offenders are subject to the Sentenc-

ing Guidelines. Thus, in order to confine an adult offender for three years, the district court might need to depart upward from the Guidelines range.[5] By the same token, however, a district court would need to depart downward in order to sentence an adult convicted of manslaughter to a term of imprisonment below the Guidelines range, while a court could impose the same sentence on a juvenile without the need for a departure. The Sentencing Guidelines limit the discretion with respect to adult offenders that the district courts previously enjoyed, but they do so in *both* directions—upward and downward—without affecting the maximum punishment that can be imposed under the statute of conviction. Thus, a juvenile committed under Section 5037 is not necessarily in a worse position than an adult sentenced under the Sentencing Guidelines.

In fact, a juvenile committed under Section 5037 is generally in a *better* position than an adult sentenced under the Sentencing Guidelines. A juvenile under the age of 18 may not be detained past the date of his twenty-first birthday, and a juvenile between 18 and 21 may not be confined for more than three years for most crimes, even if the period of incarceration for an adult exceeds that term. 18 U.S.C. 5037(c)(1)(A), (c)(2)(B). Moreover, every adult sentenced to imprisonment may be given a term of supervised release to follow the period of incarceration, and every adult imprisoned for at least one

[5] The Sentencing Guidelines' base offense level for involuntary manslaughter resulting from drunken driving (*i.e.*, "reckless" conduct) is 14. Sentencing Guidelines § 2A1.4 (a)(2); *Guidelines Manual* Application Note No. 1, at 2.4-2.5. For an offender who falls into the lowest criminal history category (Category I), the Guidelines sentence would be 15-21 months' imprisonment. *Id.* at 5.2, Sentencing Table.

year is required to be given a term of supervised release. See 18 U.S.C. 3583(a); Sentencing Guidelines § 5D1.1. By contrast, a juvenile committed under Section 5037 is not subject to any term of supervised release, regardless of the length of his confinement. 18 U.S.C. 5037(b) and (c). Thus, juveniles who are committed under Section 5037(c)(1)(B) will often be subject to shorter total periods of supervision than adults who are sentenced under the Sentencing Guidelines.[6]

In any event, it would not be inequitable or unconstitutional for a juvenile to be committed for a longer period of confinement than an adult convicted of the same offense. Juvenile offenders are detained for different reasons, in different settings, and under a different criminal justice system than adult offenders.

Because of the rehabilitative purposes and programs for offenders formerly sentenced under the Youth Corrections Act, 18 U.S.C. 5005-5024 (1982) (repealed by the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 218(a)(8), 98 Stat. 2027), the federal courts consistently held that it was not irrational, and therefore did not violate the Due Process Clause, for an offender sentenced under the Act to be subjected to a period of custody and post-release supervision in excess of the maximum sentence imposable on an adult for the same offense. See *United States* v. *Donelson*, 695 F.2d 583, 588 (D.C. Cir. 1982) (Scalia, J.); *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962) (Burger, J.) ("the basic theory of the Act is rehabilitative and in a sense

[6] The President's crime bill, S. 1241, § 105, 102d Cong., 1st Sess. (1991), would change current law by subjecting juveniles to supervised release. The bill has been passed by the Senate and is pending before the House.

this rehabilitation may be regarded as comprising the *quid pro quo* for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison").[7] The rationale of those decisions is applicable here as well. As was true in the case of the Youth Corrections Act, the purpose of the Juvenile Delinquency Act is to rehabilitate, not to punish, errant youths, and the government provides juveniles with special treatment toward that goal. See, *e.g.*, 18 U.S.C. 5035, 5039 (ensuring that juveniles are not housed with adult prisoners and guaranteeing juveniles counseling, education, and training); S. Rep. No. 1989, 75th Cong., 3d Sess. 1 (1938); H.R. Rep. No. 2617, 75th Cong., 3d Sess. 1 (1938); S. Rep. No. 1011, 93d Cong., 2d Sess. 22 (1974); *United States* v. *Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990); *In re Sealed Case (Juvenile Transfer)*, 893 F.2d 363, 367 (D.C. Cir. 1990);

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[7] See also, *e.g.*, *United States* v. *Lowery*, 726 F.2d 474, 477-478 (9th Cir. 1983), cert. denied, 469 U.S. 837 (1984); *United States* v. *Van Lufkins*, 676 F.2d 1189, 1193-1194 (8th Cir. 1982); *Johnson* v. *United States*, 374 F.2d 966, 967 (4th Cir. 1967); *Brisco* v. *United States*, 368 F.2d 214, 215 (3d Cir. 1966); *Rogers* v. *United States*, 326 F.2d 56, 57 (10th Cir. 1963); *Cunningham* v. *United States*, 256 F.2d 467, 472-473 (5th Cir. 1958). Those decisions correctly apply the rational basis standard to evaluate the different treatment accorded juvenile and adult offenders. See *Chapman* v. *United States*, 111 S. Ct. 1919, 1927-1928 (1991) (rejecting the defendant's claim that heightened scrutiny is necessary to evaluate distinctions drawn by a sentencing statute, on the ground that the defendant has a liberty interest at stake; applying the rational basis standard instead); *Gregory* v. *Ashcroft*, No. 90-50 (June 20, 1991), slip op. 16-17 (holding that age is not a suspect classification and applying a rational basis standard).

United States v. *Frasquillo-Zamosa*, 626 F.2d 99, 101 (9th Cir.), cert. denied, 449 U.S. 987 (1980).

Accordingly, the Eighth Circuit erred in believing that Section 5037(c)(1)(B) must be read to ensure that juvenile offenders are not subject to confinement for longer terms than adult criminals. That concern therefore does not provide a basis for reading the text of Section 5037(c)(1)(B) to limit the sentence that can be imposed on juveniles to those prescribed for adults in the Sentencing Guidelines.

C. The Rule Of Lenity Does Not Support The Court Of Appeals' Analysis In This Case

Finally, the Eighth Circuit invoked the rule of lenity to support its reading of Section 5037(c)(1)(B). Pet. App. 11a-12a. That canon of construction, however, does not justify the outcome reached by the court of appeals in this case.

The rule of lenity is not applicable unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston* v. *United States*, 415 U.S. 814, 831 (1974), such that even "[a]fter [a court has] 'seize[d] every thing from which aid can be derived * * *' [it is still] left with an ambiguous statute." *United States* v. *Bass*, 404 U.S. 336, 347 (1971) (quoting *United States* v. *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805)). Lenity "only serves as an aid for resolving an ambiguity; it is not to be used to beget one. * * * The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Callanan* v. *United States*, 364 U.S. 587, 596 (1961). See also, *e.g.*, *Chapman* v. *United States*, 111 S. Ct. 1919, 1926 (1991). This Court has "al-

ways reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to" the standard tools of statutory interpretation. *Moskal* v. *United States*, 111 S. Ct. 461, 465 (1990).

The rule of lenity does not apply here. The text of the Juvenile Delinquency Act and general principles of federal criminal law show that the "maximum punishment" clause in 18 U.S.C. 5037(c)(1)(B) refers to the maximum statutory penalty; nothing in the language of Section 5037 clearly expresses the contrary meaning; and "[a] straightforward reading of [that statute] does not produce a result so absurd or glaringly unjust as to raise a reasonable doubt about Congress's intent." *Chapman* v. *United States*, 111 S. Ct. at 1926-1927 (citations and internal quotation marks omitted). In these circumstances, there is no occasion to resort to the rule of lenity.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JULY 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20637

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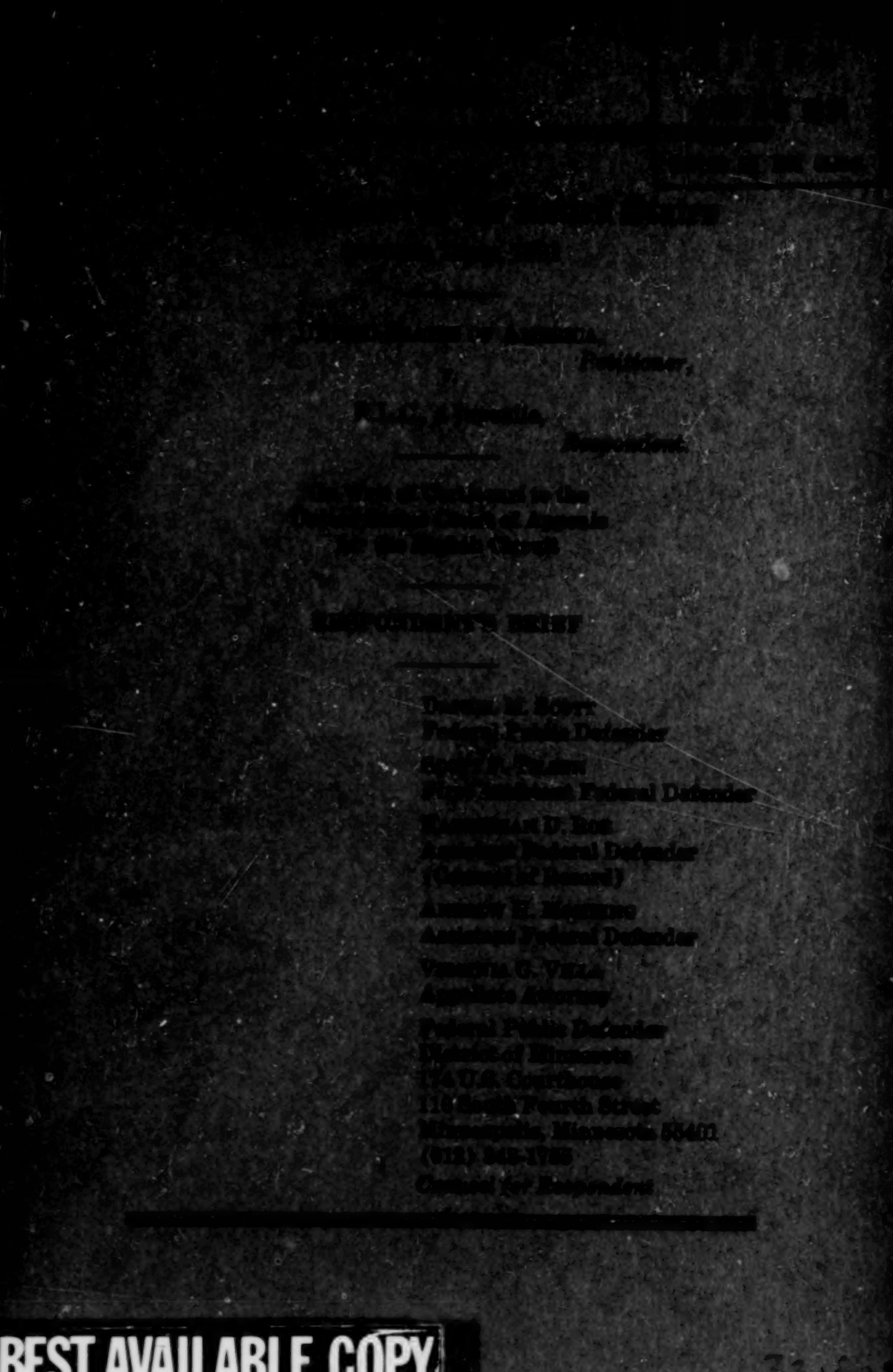

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1577

UNITED STATES OF AMERICA,
Petitioner,

v.

R.L.C., a juvenile,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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RESPONDENT'S BRIEF

STATUTORY PROVISIONS INVOLVED

The Federal Juvenile Delinquency Act, 18 U.S.C. 5037, provides, in part, as follows:

> (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an

order of restitution pursuant to section 3556, place him on probation, or commit him to official detention.
* * *

* * * *

(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or

(B) in any other case beyond the lesser of—

(i) three years; or

(ii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.

Section 3621 is applicable to an order placing a juvenile under detention.

STATEMENT

1. R.L.C., a seventeen-year-old boy, is a member of the Red Lake Band of Chippewa Indians. He grew up on the Red Lake Indian Reservation in northern Minnesota.[1]

2. On the night of November 4, 1989, R.L.C. and another youth attended an adult party and were drinking

[1] 12/21/89 Tr. at 6, 235.

alcoholic beverages. The youths left the party at approximately 11:30 p.m.[2] At approximately 12:15 a.m., November 5, the youths came upon a Chevrolet Camaro with the keys in the ignition. They took the car and began driving around the Reservation.[3] At approximately 12:23 a.m., the driver of the Camaro ran into the rear end of a car in which LaTesha Mountain was a passenger.[4] As a result of the injuries sustained in the accident, LaTesha died a few days later.[5]

3. On November 27, 1989, R.L.C. was charged in a federal Information with involuntary manslaughter. The other youth, the son of a tribal law enforcement officer, was not charged with any offense.[6]

4. A bench trial began on December 21, 1989, and concluded on December 26, 1989. Although there was considerable dispute about who was actually driving at the time, the district court determined that R.L.C. had been driving the vehicle which caused the accident resulting in LaTesha Mountain's death and found that the Government had established R.L.C.'s guilt beyond a reasonable doubt.[7]

5. As R.L.C. was sixteen years old at the time of the offense, the court adjudged R.L.C. to be a juvenile delinquent.[8]

[2] 12/21/89 Tr. at 249-253.

[3] 12/21/89 Tr. at 256-257.

[4] 12/21/89 Tr. at 15.

[5] 12/21/89 Tr. at 6, 44-45.

[6] 12/21/89 Tr. at 229.

[7] 12/26/89 Tr. at 318.

[8] 1/24/90 Tr. at 8-9.

6. The court held a disposition hearing pursuant to 18 U.S.C. § 5037 on January 24, 1990, and sentenced R.L.C. to thirty-six months detention,[9] the maximum penalty available for involuntary manslaughter under 18 U.S.C. § 1112(a). R.L.C. appealed his conviction and sentence.

7. On January 24, 1991 the Eighth Circuit Court of Appeals affirmed R.L.C.'s conviction but reversed the court's sentencing decision, holding that the district court could not sentence R.L.C. to a term of detention greater than that he would have received as an adult offender under the Federal Sentencing Guidelines. The court remanded the case for resentencing.[10]

8. At resentencing, the Government requested that R.L.C. be imprisoned for the maximum Guidelines sentence of 21 months, but did not argue that an upward departure was merited.[11] The district court considered the factors relevant to sentencing and imposed a sentence of 18 months.[12]

9. R.L.C. completed his 18 month sentence on March 20, 1991 and returned to the Red Lake Indian Reservation. He graduated from Red Lake High School in May 1991.[13]

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[9] 1/24/90 Tr. at 10.

[10] Resp. App. 12a-14a.

[11] 1/25/91 Tr. at 15-16.

[12] 1/25/91 Tr. at 16-17.

[13] App., *infra*, 1a-3a.

SUMMARY OF ARGUMENT

A. The question presented by this case is straightforward: what do the words "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" mean in 18 U.S.C. § 5037(c)(1)(B)? The answer is equally straightforward. If R.L.C. had been tried and convicted as an adult, the district court's discretion to impose the statutory maximum would have been limited by the provisions of the Federal Sentencing Guidelines. Accordingly, the plain language of subsection 5037(c)(1)(B) means that a sentencing court is restricted from imposing the statutory maximum on a juvenile offender where the Sentencing Guidelines prescribe a lesser sentence for an adult offender. Because the Eighth Circuit Court of Appeals reached this conclusion, its decision should be affirmed.

In construing a statute, a court must first look to the language of the statute itself and then to the legislative history if the statutory language is not clear. Although the plain language of this subsection indicates that juvenile sentences are limited by the Guidelines' maximum, the two terms arguably subject to construction are the word "authorize" and the phrase "maximum term of imprisonment".

It is a fundamental maxim of statutory construction that, absent compelling reasons to the contrary, words should be given their normal or usual meaning. Under normal usage, the word "authorize" means to give permission for or to be sufficient grounds for an act. The Guidelines "authorize" a term of imprisonment insofar as the Sentencing Commission has been granted the authority to set sentencing policy within statutory limits. This authority is exercised by way of the Sentencing Guidelines which commonly set maximum sentences below the statutory maximum for specified categories of offenders. A maximum sentence authorized by the Guidelines

which is below the statutory maximum is enforceable at law as a sentencing court's failure or refusal to abide by the Guidelines is reversible error. Therefore, the maximum sentence "authorized if the juvenile had been tried and convicted as an adult" is the Guidelines' maximum.

In construing the words of a statute, a court must adopt a construction which gives meaning to all of the words of a statute and should avoid any construction which renders words superfluous or redundant. In 18 U.S.C. § 5037(c)(1)(B), Congress qualified the phrase "maximum term of imprisonment" with the clause "if the juvenile had been tried and convicted as an adult". Elsewhere in Title 18, Congress has specified that the phrase "maximum term of imprisonment" refers only to the statutory maximum or has attached other modifying clauses to this phrase. Any effort to construe the phrase "maximum term of imprisonment" narrowly to mean only the statutory maximum would render the qualifying language used in 18 U.S.C. § 5037(c)(1)(B) and other sections of Title 18 superfluous, irrelevant or redundant and therefore should be avoided.

B. A court's duty in interpreting statutory language is to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being the most harmonious with its scheme and with its general purposes.

When it enacted the Federal Juvenile Delinquency Act (FJDA) in 1938, Congress limited maximum sentences for juveniles to the maximum that an adult offender could receive. The same basic juvenile sentencing structure remained in effect until 1984, when Congress amended the FJDA in the Comprehensive Crime Control Act (CCCA), the Sentencing Guidelines' enacting legislation.

Although juvenile delinquents have always been sentenced in reference to the maximum sentence available

for an adult offender, Congress created a new category of "youthful offender" in 1950 by enacting the Youth Corrections Act (YCA). The YCA was premised on the idea that, by offering rehabilitation programs to youthful offenders, such offenders would not become career criminals. Under the alternative sentencing structure of the YCA, a youthful offender could serve a greater sentence than that allowed for a similarly situated adult under certain circumstances. Courts upheld the longer sentences due to the rehabilitative nature of the YCA.

In the Comprehensive Crime Control Act of 1984, Congress rejected the rehabilitative model of sentencing and repealed the YCA in its entirety, including its alternative sentencing structure. Congress also amended the sentencing provisions of the FJDA and explicitly stated that juvenile sentences should reflect the real time a similarly situated adult offender would serve. Given the CCCA's central purpose of creating determinate sentences for adults through the Sentencing Guidelines, construing the language of subsection 5037(c)(1)(B) to refer to the Guidelines' maximum would comport with and advance the purpose of the most recent amendments to the FJDA.

C. Viewed in light of established principles of statutory construction, 18 U.S.C. § 5037(c) limits juvenile sentences to the maximum set by the Sentencing Guidelines. However, to the extent that any ambiguity lingers in the meaning of the FJDA's sentencing provisions, the Rule of Lenity requires that juvenile delinquents be incarcerated no longer than the maximum sentence an adult offender could receive under the Sentencing Guidelines.

ARGUMENT

THE MAXIMUM SENTENCE A JUVENILE MAY RECEIVE UNDER 18 U.S.C. § 5037(c)(1)(B) IS THE MAXIMUM SENTENCE SPECIFIED BY THE FEDERAL SENTENCING GUIDELINES FOR AN ADULT OFFENDER CONVICTED OF THE SAME CRIME UNDER SIMILAR CIRCUMSTANCES

The question presented by this case is straightforward: what do the words "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" mean as Congress used them in 18 U.S.C. § 5037(c)(1)(B)? The answer is equally straightforward. If R.L.C. had been tried and convicted as an adult, the district court's discretion to impose the statutory maximum would have been limited by the provisions of the Sentencing Guidelines.[14] Accordingly, the plain language of subsection 5037(c)(1)(B) means that a sentencing court is restricted from imposing the statutory maximum on a juvenile offender where the Sentencing Guidelines prescribe a lesser sentence for an adult offender.[15] Because the Eighth Circuit Court of Appeals reached this conclusion, its decision should be affirmed.

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[14] Although a court can make an upward departure from the maximum sentence suggested by the Guidelines and impose the statutory maximum, the Guidelines limit the circumstances in which this is appropriate. The Guidelines were constructed to reserve the upper ranges and the statutory maximum "for offenders who repeatedly commit offenses or those who commit an offense under particularly egregious circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 37, 114, *reprinted in* 1984 U.S. Code Cong. & Ad. News 3220, 3297. An upward departure is reviewable on appeal under 18 U.S.C. § 3742(a)(3).

[15] R.L.C. acknowledges that the Eighth Circuit's holding effectively ties juvenile sentencing to the Sentencing Guidelines. Such an effect is not surprising given that Congress directly incorporated the Guidelines' policy statements in amending 18 U.S.C. § 5037(a). The legislative history regarding the role of policy statements indicates that Congress "expected that the policy statements will be consulted at all stages of the criminal justice system, including the

A. The Plain Language Of 18 U.S.C. § 5037(c)(1)(B) Means The Maximum Sentence Available For A Juvenile Delinquent Is The Maximum Sentence Authorized By The Guidelines For A Similarly Situated [16] Adult Offender

Title 18, U.S.C., § 5037(c)(1) reads: "The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend . . . beyond the lesser of (A) the date when the juvenile becomes twenty-one years old; or (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult . . . ." Although the plain language of this subsection indicates that juvenile sentences are limited by the Guidelines' maximum, the two terms arguably subject to construction are the word "authorized" and the phrase "maximum term of imprisonment".

1. *The Sentencing Commission has the authority to set maximum sentences below the statutory maximum*

It is a fundamental maxim of statutory construction that a court's ability to adopt a restricted meaning of words rather than their usual meaning is limited to oc-

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appellate courts, in evaluating the appropriateness of the sentence and corrections program applied to a particular case." S. Rep. No. 225, 98th Cong., 2d Sess. at 167-168, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3350-3351. Therefore, the incorporation of the policy statements in subsection 5037(a) clarifies Congress' intent that such statements be considered at all stages of the criminal justice system, *including juvenile delinquency cases.* Furthermore, Congress' use of the Guidelines' policy statements in guiding the disposition of juvenile cases under subsection 5037(a) supports the conclusion that Congress also intended to incorporate the Guidelines to limit the maximum sentence available under subsection 5037(c)(1)(B).

[16] Respondent uses the phrase "similarly situated" to refer to an offender who has the same base offense level, specific offense characteristics and criminal history category. This phrase also accounts for any aggravating circumstances which would merit an upward departure from the Guidelines' range.

casions where acceptance of the usual meaning would lead to absurd results or would thwart the obvious purpose of the statute. *In Re Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978). Otherwise, where no such consequences would follow and where it appears to be consonant with the purposes of the Act, words are to be given their normal or usual meaning. *Id.* In the case at bar, this Court should construe the word "authorized" to refer to the maximum term of imprisonment provided by the Sentencing Guidelines, rather than only that set forth in the statute describing the offense, as such construction would give the word its normal meaning and would comport with the purposes of the statute.

Under normal usage, the word "authorize" means to give permission for or to be sufficient grounds for an act. *See* Morris, ed., *American Heritage Dictionary of the English Language* 89 (New College Ed. 1976). Before Congress enacted the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Title II, 98 Stat. 1976 (1984), which created the Sentencing Commission and authorized the establishment of the Sentencing Guidelines, a trial court had the discretion to impose a sentence anywhere within the statutory limits set by Congress.[17] The scope of a sentencing court's discretion has been significantly narrowed by the Sentencing Guidelines. Indeed, the Guidelines carry the force of law and a district court's failure or refusal to abide by the Guidelines constitutes reversible error.[18] As the Guidelines "permit" or "establish grounds for" a particular sentence, they "authorize" a maximum sentence within the normal, everyday meaning of that word.

[17] *See generally*, S. Rep. No. 225, 98th Cong., 2d Sess. at 39-40, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3222-3223 for a review of prior sentencing practices.

[18] *See* 18 U.S.C. 3742; *Mistretta v. United States*, 488 U.S. 361, 367 (1989) (guidelines meant to establish range of determinate sentences); *United States v. Mejia-Orosco*, 867 F.2d 216, 218 (5th Cir. 1989) (incorrect application of the Sentencing Guidelines must be reversed); *United States v. Diaz-Villafane*, 874 F.2d 43, 48 n.4 (1st Cir. 1989) (appellate court must set aside a sentence imposed as an incorrect application of the Sentencing Guidelines); U.S.S.G. § 1B1.7 (failure to follow commentary explaining how guideline is to be applied could constitute incorrect application of guidelines, subjecting sentence to possible reversal).

The Comprehensive Crime Control Act's legislative history supports giving the word "authorize" its normal meaning and makes it clear that Congress believed that the Sentencing Commission would have the authority to establish sentencing policy within the statutory limits. *See* S. Rep. No. 225, 98th Cong., 2d Sess. at 64, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3247 (describing the Sentencing Commission "as the body to which Congress will be delegating some of its authority to set sentencing policy"). This delegation is consistent with Congress' recurrent practice of assigning portions of its authority to other administrative entities.[19] Indeed, this

[19] *See, for example, Lichter v. United States*, 334 U.S. 742, 785-786 (1948) (upholding delegation of authority to determine excessive profits); *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946) (upholding delegation of authority to SEC to prevent unfair or inequitable distribution of voting power among security holders); *Yakus v. United States*, 321 U.S. 414, 426 (1944) (upholding delegation to administrator to fix commodity prices that would be fair and equitable, and would effectuate the purposes of the Emergency Price Control Act of 1942); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 600 (1944) (upholding delegation to Federal Power Commission to determine just and reasonable rates); *National Broadcasting Co. v. United States*, 319 U.S. 190, 225-226 (1943) (upholding delegation to the Federal Communications Commission to regulate broadcast licensing "as public interest, convenience, or necessity" require); *National Petroleum Refiners Assn. v. F.T.C.*, 482 F.2d 672 (D.C. Cir. 1973) (Federal Trade Commission Act conferred on FTC authority to promulgate trade regulation rules which have the effect of substantive law).

Court has already held that Congress properly delegated part of its sentencing authority to the Sentencing Commission. *Mistretta v. United States*, 488 U.S. 361, 374 (1989) (Congress' delegation of authority to Sentencing Commission sufficiently specific to meet constitutional requirements). Given the Comprehensive Crime Control Act's overall purpose of limiting a court's sentencing discretion by establishing determinate sentences and given the explicit adoption of the Guidelines' policy statements in juvenile proceedings under section 5037(a),[20] the term "authorized" in subsection 5037(c)(1)(B) plainly indicates the Sentencing Commission's delegated authority to create maximum sentences below the statutory limits.

The Government's arguments that the word "authorize" should be given a restricted interpretation meaning only "general congressional sentencing authority" and that the Guidelines do not "authorize" a sentence distort the normal meaning of the word. These arguments ignore the congressional intent underlying the Guidelines as well as the Guidelines' practical and legal effect. Furthermore, the Government's arguments simply do not comport with the way Congress has used the term, Congress' stated intent in establishing the Sentencing Commission, and this Court's prior interpretation of the Comprehensive Crime Control Act. Accordingly, the Government's argument that the word "authorized" should be narrowly construed must be rejected.

2. *Congress qualified the phrase "maximum term of imprisonment" with the clause "if the juvenile had been tried and convicted as an adult" to signify the maximum term available under the Sentencing Guidelines*

It is a basic tenet of statutory construction that "[a]ll words and provisions of statutes are intended to have meaning and are to be given effect, and no construction

[20] *See* footnote 15 at 8-9, *supra*.

should be adopted which would render statutory words or phrases meaningless, redundant or superfluous." *United States v. Ven-Fuel, Inc.*, 758 F.2d 741, 751-752 (1st Cir. 1985). *See also, Jarecki v. Searle & Co.*, 367 U.S. 303, 307-308 (1961) (courts should give effect to all provisions of a statute and should not adopt a strained reading which renders one part a mere redundancy). The only construction of the statute in controversy which will give all of its words meaning is the construction provided by the Eighth Circuit.

Subsection 5037(c)(1)(B) specifies that the maximum sentence a court can impose on a juvenile delinquent is "the maximum term of imprisonment *that would be authorized if the juvenile had been tried and convicted as an adult; . . .*" (emphasis added).[21] Congress' specification that the phrase "maximum term of imprisonment" means the maximum an adult would receive if convicted supports the conclusion that Congress meant something other than just the statutory maximum in section 5037. In enacting 18 U.S.C. § 3559(b) (sentencing classification of offenses), Congress wrote, "the maximum term of imprisonment *is the term authorized by the law describing the offense*." (Emphasis added.) The drafters evidently felt that "maximum term of imprisonment" did not exclusively refer to the statutory maximum and therefore clarified their intent by adding the supplemental language

[21] Section 5037 previously provided, in relevant part, that "commitment . . . shall not extend beyond . . . the maximum term which could have been imposed on an adult *convicted of the same offense*, ..." 18 U.S.C. § 5037(b) (1982) (emphasis added.) Although the 1984 amendment continued the practice of sentencing juveniles in reference to the maximum term available for an adult, Congress deleted any reference to sentencing pursuant to an offense. Since pursuant to the Act the maximum term of imprisonment authorized for an adult offender would be determined in reference to the Sentencing Guidelines, the qualifying language contained in subsection 5037(c)(1)(B) only makes sense in reference to the maximum term of imprisonment authorized by the Sentencing Guidelines.

emphasized above. Congress obviously can specify that it means only the statutory maximum when it so desires. Accordingly, it is significant that Congress did not include any modifying language which would indicate that the only limit in juvenile sentence is the statutory maximum.

In addition to 18 U.S.C. §§ 3559(b) and 5037(c)(1)(B), several other sections of Title 18 contain the phrase "maximum term of imprisonment". *See* 18 U.S.C. §§ 3, 373, 3142(e), 3156(a)(3).[22] In these sections, Congress used qualifying phrases to specify either the statutory maximum or some other maximum.[23] The fact that Con-

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[22] R.L.C. uses these sections as the Government refers to them in its brief. *See* Pet. Br. at 17, n.3. This is not meant to be an exhaustive list, but is merely representative of the way Congress varies its use of the phrase "maximum term of imprisonment".

[23] For example, in section 3142(e) (pretrial detention) the phrase "maximum term of imprisonment" is used in reference to certain enumerated statutes and therefore means the statutory maximum. Similarly, section 3156(a)(3) (defining "felony" as used in §§ 3141-3150) refers to "an offense", and by extension the statute creating the offense, which thereby modifies the phrase "maximum term of imprisonment" to mean the statutory maximum.

Conversely, sections 3 (accessory after the fact) and 373 (solicitation of a crime of violence) use "maximum term of imprisonment" in reference to half of the maximum available for the principal or for the offense solicited, respectively. Although these sections reference other offenses, as a practical matter the "maximum term of imprisonment" under these sections is calculated with reference to the Guidelines' maximum for the principal or the underlying offense rather than the statutory maximum. *See* U.S.S.G. § 2X3.1.(a) (base offense level for 18 U.S.C. § 3 set six levels below that for the underlying offense); U.S.S.G. § 2X5.1 (most analogous guideline applies where no specific guideline exists). The Sentencing Commission obviously did not consider these statutes to require that half of the statutory maximum be imposed and instead keyed the maximum sentence to the Guidelines' range for the underlying offense. Therefore, "maximum term of imprisonment" as used in 18 U.S.C. §§ 3 and 373 does not exclusively mean the statutory maximum.

gress used modifying language not only in subsections 3559(b) and 5037(c)(1)(B) but also in each of these additional sections demonstrates that the naked phrase "maximum term of imprisonment" in and of itself does not invariably mean the statutory maximum. When Congress means the maximum term of imprisonment to be the statutory maximum, it specifically says so.

If "the maximum term of imprisonment" were construed as invariably meaning the statutory maximum, the phrase "if the juvenile had been tried and convicted as an adult" contained in subsection 5037(c)(1)(B) would become a nullity because the only "maximum term of imprisonment authorized" would be the statutory maximum. Furthermore, Congress would have had no need to include the clause "except that the maximum term of imprisonment is the term authorized by the law describing the offense" in 18 U.S.C. § 3559(b) and this phrase would become superfluous. Finally, the qualifying phrases used in conjunction with "maximum term of imprisonment" found throughout Title 18 would become nullities or mere redundancies because the "maximum term of imprisonment" could have but one meaning. Accordingly, this construction would do affirmative violence to the statutes as written and must be rejected.

B. The History Of The Laws Pertaining To Juvenile Offenders And The Legislative History Of 18 U.S.C. § 5037 Support The Conclusion That Juveniles Can Receive A Sentence No Longer Than The Maximum Sentence An Adult Offender Could Receive Under The Sentencing Guidelines

A court's duty in interpreting statutory language is to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being the most harmonious with its scheme and with the general purposes that Congress manifested. *C.I.R. v. Engle*, 464 U.S. 206, 217 (1984). The ensuing review of the history of the

Federal Juvenile Delinquency Act,[24] as amended, and the Youth Corrections Act,[25] confirms that the Eighth Circuit's decision is in harmony with the policies underlying the Federal Juvenile Delinquency Act, as amended.

Congress first recognized a need to treat juvenile offenders separately from adult offenders when it passed the Federal Juvenile Delinquency Act in 1938. This Act governs the disposition of persons under the age of eighteen years who commit offenses against the laws of the United States and provides that juveniles are to be placed apart from adult offenders, giving the Director of the Bureau of Prisons the authority to contract with public or private agencies for the custody, care, subsistence, education and training of juvenile delinquents. *See* 18 U.S.C. §§ 5031 *et seq.* As originally enacted, a person adjudged to be a juvenile delinquent could be placed on probation or committed to the custody of the Attorney General for a period "not exceeding the minority of the juvenile, and in no event exceeding the term for which the juvenile could have been sentenced if he had been tried and convicted of the offense which he had committed." Pub. L. No. 75-666, ch. 486, § 4, 52 Stat. 765.[26]

In 1950, Congress expanded the provisions specifically designed for young adult offenders by passing the Youth

[24] Pub. L. No. 75-666, ch. 486, 52 Stat. 764 (1938).

[25] Pub. L. No. 81-865, ch. 115, § 2, 64 Stat. 1086 (1950).

[26] Congress amended this provision in the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, Title V, 88 Stat. 1095, changing the above quoted language to read that probation or commitment "shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense . . ." *Id.*, § 507, 88 Stat. 1136. There is no legislative history concerning this change in wording. However, it appears that this was merely a change in form since the Sentencing Guidelines had not been formulated and therefore adults were subject to the statutory maximum at the time.

Corrections Act. This Act created a Youth Correction Division within the Board of Parole (later the Parole Commission), *see* 18 U.S.C. § 5005 (1982), applied to persons under the age of twenty-two years at the time of conviction, *see* 18 U.S.C. § 5006 (1982)[27] and provided an alternative sentencing structure for young adult offenders. *See* 18 U.S.C. § 5010(b) (1982) (court may, in lieu of penalty of imprisonment otherwise provided by law, sentence youth offenders to custody of Attorney General for treatment and supervision pursuant to this chapter).

The Act was designed to "promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so . . . avoid the degenerative and needless transformation of many of these young persons into habitual criminals." H.R. Rep. No. 2979, 81st Cong., 2d Sess. 1, *reprinted in* 1950 U.S. Code Cong. & Ad. News 3983. The Act was to accomplish this purpose by "provid[ing] for the youthful offenders committed . . . by the courts a system of analysis, treatment, and release that will cure rather than accentuate the anti-social tendencies that have led to the commission of crime." *Id.* Under this system, a young adult offender could be sentenced to a period of detention greater than the statutory maximum for the underlying crime, up to a period of six years.[28] *See Carter v. United States*, 306

[27] Although section 5006 defined a "youth offender" as a person under the age of twenty-two at the time of conviction, this Act did not apply to juvenile delinquents as the adjudication of a juvenile as a delinquent is a determination of status rather than a criminal conviction. *See United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.), *cert. denied*, 449 U.S. 987 (1980). R.L.C. includes a discussion of the Youth Corrections Act in this section since the history of this Act supports the conclusion that, by enacting the Comprehensive Crime Control Act, Congress intended to reduce sentencing disparities for all categories of offenders.

[28] If the statute defining the underlying offense provided for a sentence greater than six years, a sentencing court could detain

F.2d 283 (D.C.Cir. 1962) (sentence under Youth Corrections Act in cases of misdemeanors may be longer than one year due to rehabilitative nature of detention under Act).

In 1976 Congress amended the Youth Corrections Act by passing the Parole Commission and Reorganization Act, Pub. L. No. 94-233 § 3, 90 Stat. 231. Congress enacted this legislation to "reorganize the Federal paroling structure to replace the present United States Board of Parole with the U.S. Parole Commission, and to make certain changes in parole and procedures." S. Rep. No. 369, 94th Cong., 2d Sess. 1, 14, *reprinted in* 1976 U.S. Code Cong. & Ad. News 335. Congress reorganized the federal parole system with the intent that "offenders sentenced for similar crimes under similar circumstances will be required to serve comparable periods of incarceration." *Id.* at 18, *reprinted in* 1976 U.S. Code Cong. & Ad. News at 340. Congress made it clear that decisions regarding parole of young adult offenders would be made in the manner prescribed for all offenders. *Id.* at 28-29, *reprinted in* 1976 U.S. Code Cong. & Ad. News at 350. As such, this bill represents Congress' first attempt to equalize the terms of imprisonment served by youthful and adult offenders.[29]

Dissatisfied with the results obtained under the parole system, Congress passed the Comprehensive Crime Control Act of 1984, which phased out the Parole Commission and curtailed the sentencing discretion of judges. In passing this Act, Congress recognized that

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a youth within the youth corrections system for the maximum term provided for by statute, but could not otherwise exceed the statutory maximum. *See* 18 U.S.C. 5010(c) (1982).

[29] However, this reform did not affect the sentencing provisions applicable to youthful offenders, and a court could still impose a term of incarceration on a youthful offender greater than the maximum term of imprisonment for the underlying crime, but only up to a period of six years. *See, for example, United States v. Donelson,* 695 F.2d 583 (D.C. Cir. 1982).

> The sentencing provisions of current law were originally based on a rehabilitation model in which the sentencing judge was expected to sentence a defendant to a fairly long term of imprisonment. The defendant was eligible for release on parole after serving one-third of his term. The Parole Commission was charged with setting his release date if it concluded that he was sufficiently rehabilitated. At present, the concepts of indeterminate sentencing and parole release depend for their justification exclusively upon this model of "coercive" rehabilitation—the theory of correction that ties prison release dates to the successful completion of certain vocational, educational, and counseling programs within the prisons.
>
> Recent studies suggest that this approach has failed, and most sentencing judges as well as the Parole Commission agree that the rehabilitation model is not an appropriate basis for sentencing decisions. We know too little about human behavior to be able to rehabilitate individuals on a routine basis or even to determine accurately whether or when a particular prisoner has been rehabilitated. Until the present sentencing statutes are changed, however, judges and the Parole Commission are left to exercise their discretion to carry out what each believes to be the purposes of sentencing.

S. Rep. No. 225, 98th Cong., 2d Sess. at 40, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3223 (footnotes omitted). Congress rejected the rehabilitation model and repealed the alternative sentencing structure created by the Youth Corrections Act, amending the Federal Juvenile Delinquency Act to provide that "[t]he term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend . . . beyond the lesser of (A) the date when the juvenile becomes twenty-one years old; or (B) the maximum term of imprisonment that would be authorized if the juvenile

had been tried and convicted as an adult . . . ." 18 U.S.C. § 5037(c)(1).[30]

Congress' stated purpose for this change was to amend the laws relating to juvenile delinquency "in order to conform [them] to the changes made in adult sentencing laws." S. Rep. No. 225, 98th Cong., 2nd Sess at 155, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3338. Furthermore, the legislative history tells us that Congress "expected that the time set at the disposition hearing for a juvenile placed in the custody of the Attorney General . . . will represent *the real time to be spent by the juvenile in a manner similar to that for adult offenders under the bill.*" *Id.* at 156, *reprinted in* 1984 U.S. Code Cong. & Ad. News at 3339 (emphasis added).[31] The

[30] The amendment as originally passed made reference to section 3581(b). *See* 18 U.S.C. § 5037(c) (1985). In the Criminal Law Technical Amendment Act, Pub. L. No. 99-646, § 21(a), 100 Stat. 3596 (1986), Congress deleted the reference to subsection 3581(b) as an incorrect cross reference. *See* H.R. Rep. No. 797, 99th Cong., 2d Sess. 21 (1986). The Congressional Record states that "deleting the reference to section 3581(b) will tie the maximum sentences for juveniles to the maximum for adults, rather than making juvenile sentences more severe than adult sentences." 131 Cong. Rec. 14,177 (1985). Congress also amended this section specifically to allow juveniles to earn "good time" and stated that "[i]f terms of incarceration for juveniles are to be made fully determinate, as they are in the Comprehensive Act, there is little justification for making juvenile sentences more severe than adult sentences." *Id.* Considering that juvenile sentences historically have been limited to the maximum available for adults, it makes sense that Congress was referring here to adult sentences under the Guidelines rather than to the statutory maximum.

[31] The deleted portion of this quotation refers to 18 U.S.C. § 5037(b), which relates to placing juveniles on probation after the 1984 amendments. It is likely that the reference to subsection 5037(b) (instead of subsection (c)) was a misprint, since Congress typically uses the phrase "committed to the custody of the Attorney General" to mean official detention rather than probation. *See, for example,* Federal Juvenile Delinquency Act, Pub. L. No. 75-666, ch. 486, § 4, 52 Stat. 765 (person proceeding as juvenile can be

record reflects that Congress intended juvenile sentences to be limited to the maximum sentence provided for an adult under the Guidelines when it drafted the amendments to 18 U.S.C. § 5037.

The Government argues that the Eighth Circuit was unduly concerned with avoiding disparate terms of imprisonment for juvenile and adult offenders and that such concern did not support the Eighth Circuit's decision. The Government reasons that a juvenile sentenced under 18 U.S.C. § 5037 is in a better position than an adult sentenced under the Guidelines because section 5037 only creates limitations on maximum sentences and does not impose minimum sentences. Finally, the Government points out that it would not be a violation of due process to sentence a juvenile to the statutory maximum where a similarly situated adult would receive a lesser sentence under the Guidelines and cites to various cases decided under the Youth Corrections Act.

Each of these arguments is in essence misdirected. The Eighth Circuit's concern over disparate sentences directly derives from congressional intent as stated in the legislative history. It is Congress' intent which controls and the Government's arguments simply ignore the relevant legislative history. It seems ludicrous that Congress would have created a subclass of offenders who would in effect re-

placed on probation *or* committed to the custody of the Attorney General).

Alternatively, this reference may relate to section 5037 prior to the 1984 amendments, as the sentencing provisions at issue previously were contained in section 5037(b). *See* 18 U.S.C. § 5037(b) (1982).

Even if the reference to section 5037(b) does not refer to the statute prior to its amendment nor is a misprint, Congress used "if the juvenile had been tried and convicted as an adult" in reference to a sentence of probation in the exact manner as it did in relation to commitment. Accordingly, it may be assumed that it meant juveniles and adults to serve comparable "real time" sentences of both probation and incarceration.

ceive uniformly more severe sentences after the enactment of the Comprehensive Crime Control Act when the central purpose of the Act was to minimize sentencing disparities for all classes of offenders.[32] That a minimum sentence is not imposed on juveniles under section 5037 does not advance the Government's position since the issue at bar is the *maximum* sentence allowable under this section.[33] Finally, whether due process would allow Congress to impose a longer sentence on juvenile offenders is irrelevant because *Congress has not chosen to do so.* Indeed, *juveniles* never were subject to longer sentences and Congress repealed the Act under which the cases the Government cites were decided. Thus, the Government's arguments are not relevant to the interpretation of 18 U.S.C. § 5037(c)(1)(B).

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[32] Under the Government's interpretation, juvenile delinquents would in effect receive more severe sentences because the 1984 Act repealed 18 U.S.C. § 5041, which provided for the parole of juvenile delinquents. Although the 1984 Act also abolished parole for adult offenders, the Sentencing Guidelines replaced the executive clemency of parole with maximum sentences below the statutory maximum for certain categories of offenders. Thus, it seems inconsistent that Congress would have subjected juvenile offenders to the statutory maximum when it intended that the "real time" to be spent by juveniles would be similar to that spent by adults under the Act.

[33] Indeed, it is difficult to accept the Government's argument that a juvenile sentenced to the statutory maximum, as was R.L.C., is somehow "better off" than if he were sentenced to the Guidelines' maximum. As the court of appeals noted, "an adult convicted of involuntary manslaughter could be sentenced under the guidelines to the statutory maximum of three years imprisonment only if he had a criminal history category of V, representing the equivalent of four prior felony convictions." *See,* Resp. App. at 11a. There is nothing in section 5037 to indicate that the Guidelines minimum would apply.

C. To The Extent That Any Ambiguity Persists In The Meaning Of 18 U.S.C. § 5037(c)(1)(B), The Rule Of Lenity Requires That Juvenile Sentences Not Exceed Those Which Adult Offenders Could Receive Under The Sentencing Guidelines

Viewed in light of established principles of statutory interpretation, 18 U.S.C. § 5037(c)(1)(B) limits juvenile sentences to the maximum set by the Sentencing Guidelines. If, after considering all of the foregoing history, this Court still is of the opinion that the plain language of the statute and the intent of Congress are unclear regarding which maximum applies under this section, it must apply the Rule of Lenity. Although the Rule of Lenity does not apply unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston v. United States*, 415 U.S. 814, 831 (1974), any doubt about which limitations are incorporated, those of the statutes describing the offense or those of the Sentencing Guidelines, can only be the result of a "grievous ambiguity or uncertainty". The Rule of Lenity dictates that a court cannot construe a federal criminal statute "so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). Any reservation this Court may have that the legislative history does not support the Eighth Circuit's decision can only be the result of an underlying uncertainty as to congressional intent. The Rule of Lenity favors the statutory construction that yields the shorter sentence. This is the result the Eighth Circuit reached. Accordingly, its decision should be affirmed.

CONCLUSION

The plain language of 18 U.S.C. § 5037(c)(1)(B) and the legislative history pertaining to Congress' policy of sentencing juvenile offenders supports the decision of the Eighth Circuit Court of Appeals. Accordingly, the decision of the court below is due to be affirmed.

Respectfully submitted,

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Redlake, Minnesota

This Certifies That

ROBERT CLYK

has satisfactorily completed the Course of Study prescribed for Graduation from this School and is therefore entitled to this

Diploma

Given this month of May, nineteen hundred ninety-one.

Judy Bonga — CHAIRMAN

Dorothy M Chenais — CLERK

John M Eggen — PRINCIPAL

Ed. W. Kraemke — SUPERINTENDENT

R-84 (Rev. 5-14-80)

FINAL DISPOSITION REPORT

MTW

Leave Blank

Note: This vital report must be prepared on each individual whose arrest fingerprints have been forwarded to the FBI Identification Division without final disposition noted thereon. If no final disposition is available to arresting agency, also obtain subject's right four finger impressions on this form, complete left side and forward the form when case referred to prosecutor and/or courts. Agency on notice as to final disposition should complete this form and submit to: **Director, FBI, Washington, D.C. 20537, Attention: Identification Division.**
(See instuctions on reverse side)

FBI No.

Name on Fingerprint Card Submitted to FBI

Last	First	Middle
COOK,	Robert	Lee

Date of Birth August 31, 1973 Sex Male

Henry Fingerprint Classification

From FBI 1-B Response

State Bureau No. (SID)

Social Security No. (SOC) 474-84-9551

Contributor of Fingerprints (Include complete name and location of agency, together with ORI number.)

MISSOURI RIVER ADOL DEVEL CENTER
211 West 16th Avenue
Chamberlain, S.D. 57325

Arrest No. (OCA) 04330-041

Date Arrested or Received 02-02-1990 Received

Offenses Charged at Arrest

Involuntary Manslaughter on an Indian Reservation, 18 USC 1112(b) & 1153.

If additional space is needed, check ☐ and continue on reverse side of this form.

Final Disposition & Date
(If convicted or subject pleaded guilty to lesser charge, include this modification with disposition.)

Sentenced on 01-24-1990 to 3 years imprisonment. On 01-25-1991, sentence reduced to a term of 18 months.

This Form Submitted By:
(Name, Title, Agency, ORI No., City & State)

Community Corrections Division Of
1961 Stout Street, Room 665
Denver, Colorado 80294
ORI# CO016047C

M.A. Real — Signature
02-05-1991 — Date
Legal Technician — Title

☐ COURT ORDERED EXPUNGEMENT:
Return Arrest Fingerprint Card to Contributing Agency;
Certified or Authenticated Copy of Court Order Attached.

Right Four Fingers Taken Simultaneously

RECEIVED
AT PIERRE, S. D.
MAR 22 1991
U.S. PROBATION OFFICE
DISTRICT OF SOUTH DAKOTA

MAR 21 199

APPENDIX B

2a

BEST AVAILABLE COPY

U.S. Department of Justice
Bureau of Prisons

Notice of Release and Arr

SECTION ONE - To Be Completed by Institution Officials

MAR 2 · 19[illegible]

Name COOK, Robert Lee Reg. No. 04330-041 FBI No. [illegible] S. PROBATION U·

Type of Release GCT Rel (Parole or M/R) Was there a previous release on this sentence? No

Mailing address of proposed residence Box 512, Red Lake, MN 56671

The above-named person was released from MISSOURI RIVER ADOLESCENT DEVELOPEMENT CENTER 211 West 16th Avenue, Chamberlain, S.D. 57325 (Name of institution)

at 8:50 AM o'clock, on March 20, 1991. Transportation was arranged to Red Lake, MN (City and State) via auto (name of bus, train, airline, or by auto)

Name of detaining authority, if any None (Agency and location)

If not released to detainer, estimated date of arrival at residence

Gratuity: $ Other money in personal account: $ Total: $

Amount given to releasee: $ Amount mailed: $

Address to which mailed:

Special Instructions:

Chief U.S. Probation Officer of district of residence Jack R. Saylor

District of South Dakota Address 212 U.S. Courthouse 400 South Phillips, S.D. 57102-0974

SECTION TWO - To Be Completed by Releasee and Taken or Mailed to Probation Officer Within Three Days After Arrival in District of Residence.

I have this day arrived at (City and State)

Date released from detainer (if any) My home address will be

RECEIVED
AT [illegible]RE, S. D.
MAR 22 1991
U.S. PROBATION OFFICE
DISTRICT OF SOUTH DAKOTA

(Signature of probation officer to whom assigned) 3-22-91 (Date of releasee's arrival)

INSTRUCTIONS

INSTITUTION: In parole or mandatory release cases, prepare 4 copies. Give original to releasee; mail a copy to the United States probation officer and a copy to the Parole Commission; retain a copy for your file.
In expiration cases, prepare 2 copies: Mail original to United States probation officer for information only and retain a copy for your file.

RELEASEE (Parole or M/R): Upon arrival, report immediately to the United States probation officer. If released to a detainer, report this form until no longer in custody; then take or mail to the United States probation officer to whom you are assigned.

RECEIVED P.M.
MAR 2[illegible] 1991
U.S PROBATION OFFICE
ST PAUL MINNESOTA

Parole Form I-13 Dec. 1979
GPO 863-993

APPENDIX C

38

BEST AVAILABLE COPY

Supreme Court, U.S.
FILED
SEP 13 1991
OFFICE OF THE CLERK

No. 90-1577

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1577

UNITED STATES OF AMERICA, PETITIONER

v.

R.L.C., A JUVENILE MALE

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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1. There are two critical flaws in respondent's interpretation of 18 U.S.C. 5037(c)(1)(B). The first is that under his interpretation, the Sentencing Guidelines would in effect apply to juvenile proceedings, at least to the extent of setting the maximum permissible penalties. See Resp. Br. 8-9 n.15, 22 n.33. But as we explained in our opening brief (at 10-11 n.1), two laws make clear that the Sentencing Guidelines do not apply to juvenile proceedings, and the Sentencing Commission recently echoed that point, 56 Fed. Reg. 22,779 (1991) ("The guidelines are not applicable to a person sentenced as a juvenile delinquent under the provisions of 18 U.S.C. 5037."). Accord *United States* v. *Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), cert. denied, 493 U.S. 956 (1989).

Section 5037(a) of Title 18 requires the district courts in juvenile proceedings to consider "any pertinent policy statements" adopted by the Sentencing Commission, but does not apply the Sentencing Guidelines to such proceedings. Furthermore, 28 U.S.C. 995(a)(19) directs the Sentencing Commission to "study the feasibility of developing guidelines for the disposition of juvenile delinquents," which shows that Congress did not regard the Guidelines in their current form as governing juvenile proceedings. In light of those statutes, Section 5037(c)(1)(B) should not be construed in a manner that in effect applies the Sentencing Guidelines to juvenile proceedings.

The second critical flaw in respondents' argument is that his interpretation of Section 5037(c)(1)(B) is unfaithful to its text. He contends that Section 5037(c)(1)(B) requires a court to impose on a juvenile the same sentence that the court would have imposed on a "similarly situated adult offender," *i.e.*, one with "the same base offense level, specific offense characteristics and criminal history category," as well as "any aggravating circumstances which would merit an upward departure from the Guidelines' range." Resp. Br. 11 n.16. That contention might have had merit if Congress had written Section 5037(c)(1)(B) to refer to "the *same* term of imprisonment that *would have been imposed* if the juvenile had been tried and convicted as an adult." But Congress did not write the statute that way. Instead, Section 5037(c)(1)(B) refers to "the *maximum* term of imprisonment that *would be authorized* if the juvenile had been tried and convicted as an adult" (emphasis added). That phrase is most naturally read to refer to the maximum statutory punishment that Congress has authorized a court to impose for a crime, since only Congress can authorize a court to sentence a defendant to a term of imprisonment. See *United States* v. *Evans*, 333 U.S. 483 (1948); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812).

Respondent contends that we have defined the term "authorized" too narrowly. He maintains that the term includes the authority Congress vested in the Sentencing Commission to restrict and channel the district courts' discretion at sentencing; that the Sentencing Commission has the authority to define maximum sentences under the Sentencing Guidelines that are less than the statutory maximum; and that the Sentencing Commission has done precisely that by devising rules and procedures that the courts must follow in sentencing under the Guidelines. Resp. Br. 9-12.

Respondent misapprehends the role that the Guidelines play in the federal sentencing process. The Guidelines channel the district courts' discretion to sentence within congressionally authorized limits, ordering and weighing factors that the courts would otherwise consider at sentencing. The Sentencing Guidelines do not vest sentencing authority in district courts; rather, the Guidelines *restrict* the discretion that courts possess by virtue of a statute and a guilty verdict.

2. Respondent claims that if Section 5037(c)(1)(B) does not refer to the maximum sentence authorized by the Sentencing Guidelines, part of the statute is superfluous. His argument proceeds as follows: Section 5037(c)(1)(A) and (B) limit the sentence that a juvenile under the age of 18 can receive to the lesser of the period before he turns 21 or "the maximum term of imprisonment that would be authorized *if the juvenile had been tried and convicted as an adult*" (emphasis added). Respondent maintains that if the phrase "the maximum term of imprisonment"

refers to the statutory maximum sentence, as we have argued, then the italicized phrase is superfluous, since the "maximum term of imprisonment" necessarily refers to the statutory maximum term of imprisonment that an adult can receive. For that reason, respondent concludes, the italicized phrase must refer to the maximum sentence that an adult can receive under the Sentencing Guidelines. Resp. Br. 12-15.

Respondent is wrong; the statutory language in question is not superfluous under our construction. First, the statutory language makes clear that the source of authority for the maximum term of imprisonment is the offense of conviction, which dictates the term of imprisonment for adult offenders. Second, the language used in Section 5037 adds a degree of specificity that may be necessary in some cases. Because some statutes provide different penalties based on factors such as the defendant's prior record or the fate of the victim,[1] the language used in Section 5037 is necessary to make clear Congress's intent to subject juveniles to the same statutory maximum term of imprisonment to which similarly situated adults would be subjected. The phrase that respondent claims we have rendered superfluous is therefore necessary to avoid an ambiguity that could arise from a terser version of the statute.[2]

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[1] See, *e.g.*, 18 U.S.C. 241, 242, 924(c), and 924(e)(1); 21 U.S.C. 841(b).

[2] Our construction of Section 5037(c)(1)(B) is also consistent with the background of the statute. Section 5037(c)(1)(B) was enacted as part of the Comprehensive Crime Control Act of 1984; at that time, the statute referred to "the maximum term of imprisonment that would be authorized *by [18 U.S.C.] 3581(b)* if the juvenile had been tried and convicted as an adult." 18 U.S.C. 5037(c)(1)(B) (Supp. II 1984) (emphasis added). Section 3581(b), which was cross-referenced in the original version of Section 5037(c)(1)(B), was part of the new offense classification system adopted by the 1984 Act. Because Section 3581 defined maximum terms of imprisonment for adults, it made sense to refer to that provision in Section 5037. In addition, because Section 3581(b) did not apply to juvenile sentencing, it made sense to refer to the penalty under Section 3581(b) that would have applied if the juvenile had been prosecuted as an adult. The part of Section 5037(c)(1)(B) cited by respondent ("if the juvenile had been tried and convicted as an adult") therefore was not superfluous when that law was enacted. As we explained in our opening brief (at 18-21), Congress deleted the cross-reference to 18 U.S.C. 3581(b) in 1986. In so doing, Congress modified Section 5037(c)(1)(B) to ensure that juveniles would not generally be subject to longer terms of confinement than adults; Congress did not make the change in order to apply the Sentencing Guidelines to juvenile proceedings.

3. Respondent discusses at length the history of the Juvenile Delinquency Act, 18 U.S.C. 5031-5042, which, he claims, shows that a juvenile offender cannot receive a sentence longer than the Guidelines sentence that an adult offender would receive for the same crime. Resp. Br. 15-22. Nothing respondent cites remotely supports his argument.

The Juvenile Delinquency Act, which was enacted in 1938, was revised as part of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976, but nothing in the 1984 Act or its legislative history hints that the Sentencing Guidelines were meant to apply to juvenile proceedings. Respondent cites a passage from the Senate Report stating that the sentences imposed at juvenile disposition hearings "will represent the real time to be spent by the Juvenile in a manner similar to that for adult offenders under the bill." Resp. Br. 20, quoting S. Rep. No. 225, 98th Cong., 1st Sess. 156 (1983). But that passage simply explains that because the 1984 Act abol-

ished parole for both adult and juvenile offenders, the sentence imposed at a juvenile disposition is the sentence that the juvenile will actually serve. That point does not support the proposition that a juvenile cannot receive a sentence longer than the sentence that an adult would receive under the Sentencing Guidelines.

4. Respondent argues that declining to apply the Sentencing Guidelines to juvenile offenders is inconsistent with the purpose of the Comprehensive Crime Control Act of 1984. Resp. Br. 21-22. In respondent's words, "[i]t seems ludicrous that Congress would have created a subclass of offenders who would in effect receive uniformly more severe sentences after the enactment of the Comprehensive Crime Control Act when the central purpose of the Act was to minimize sentencing disparities for all classes of offenders." Resp. Br. 21-22. There is, however, no reason to suppose that juveniles will "in effect receive uniformly more severe sentences" under the Comprehensive Crime Control Act of 1984. The Juvenile Delinquency Act limits juvenile sentences in various respects that do not apply to adult sentences: A juvenile under 18 may not be confined after date of his 21st birthday, 18 U.S.C. 5037(c)(1)(A), and a juvenile between the ages of 18 and 21 may not be confined for more than five years for a particularly serious felony and three years for a less serious felony, 18 U.S.C. 5037(c)(2). The only effect of the "maximum term of imprisonment" clause at issue in this case is to provide that in those cases in which the district court believes that a lengthy period of detention would serve the interests of society and the juvenile, the court will have the discretion to impose that term of detention without being restricted to the term

that would apply under the Sentencing Guidelines to a similarly situated adult. In many instances, periods of juvenile detention will be shorter than or equal to the period of imprisonment that would be imposed on similarly situated adults. Our submission is that nothing in Section 5037 requires that that always be the case.

For the foregoing reasons and those given in our opening brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

KENNETH W. STARR
Solicitor General

SEPTEMBER 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 45074